

No. 13555

United States
Court of Appeals
for the Ninth Circuit.

GEORGE TAKEHARA,

Appellant,

vs.

DEAN G. ACHESON, Secretary of State of the
United States,

Appellee.

Transcript of Record

Appeals from the United States District Court,
Western District of Washington,
Southern Division.







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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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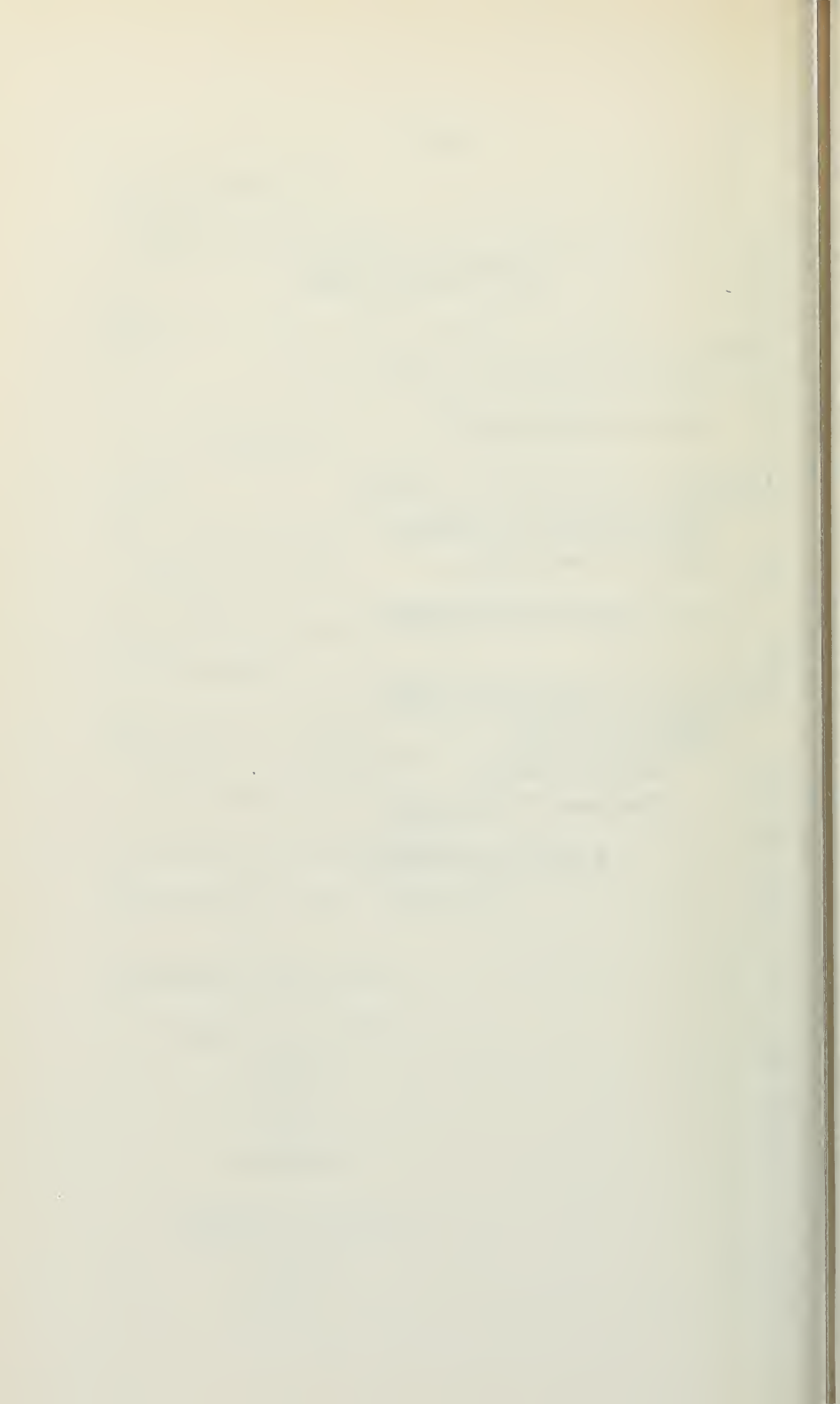
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In the United States District Court for the Western
District of Washington, Southern Division

No. 1482

GEORGE TAKEHARA,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the
United States,

Defendant.

AMENDED COMPLAINT

Comes now George Takehara, plaintiff herein, and
for amended cause of action alleges as follows:

I.

That plaintiff George Takehara is now temporarily in Japan, and claims Tacoma, Washington, as his permanent residence in the Western District of Washington, Southern Division.

II.

That Dean G. Acheson is the duly appointed, qualified and acting Secretary of State of the United States; that the American Consul General, Consuls and Vice Consuls at Kobe, Japan, are officials of the Department of State acting under the direction of Dean G. Acheson as Secretary of State of the United States.

III.

That jurisdiction of this action is conferred upon this court by Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U.S.C.A. 903.

IV.

That plaintiff George Takehara is a citizen of the United States by virtue of the Fourteenth Amendment to the Constitution on the ground of having been born in Firwood, Washington, United States of America, on March 13, 1926, and claims his permanent residence as Fife, Washington, where his father and mother reside in the Western District of Washington, Southern Division.

V.

That plaintiff George Takehara desires to return to the United States and did accordingly apply to the American Vice Consul at Kobe, Japan, for an American passport or travel document in order to obtain transportation to the United States and then apply for admission thereto as a citizen of the United States.

VI.

That the Vice Consul of the United States of **America** at **Kobe, Japan**, has refused to recognize the American citizenship claimed by plaintiff herein on the ground that the said plaintiff has expatriated himself under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, by "voting in the Japanese political election of April 5, 1947." That a copy of said certificate is attached hereto marked Exhibit A and incorporated as a part hereof by this reference.

VII.

That plaintiff George Takehara admits that he did vote at the election in Japan as alleged by the

American Vice Consul as set forth in paragraph VI but notwithstanding said section 401 (e) of Chapter IV of the Nationality Act of 1940 (8 U.S.C. 801) claims that he did not thereby become expatriated for the reason that at the time of the said voting in a technical sense Japan was not an independent country, but was then and now under the jurisdiction of the United States and at the time of said election subject to the direct command of General Douglas MacArthur of the United States Army, Supreme Commander for Allied Powers with full jurisdiction over Japan, and in addition the voting at the said election was done pursuant to order of the said MacArthur acting in such capacity. That the voting of plaintiff was not his free and voluntary act, that it was done by plaintiff under duress, coercion, intimidation and under fear of punishment; that he was in fear of losing his ration card and of other punishment by the Japanese authorities if he did not vote.

VIII.

That plaintiff claims United States nationality and citizenship in this action in good faith and on a substantial basis.

IX.

That the expatriation of plaintiff under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940 (8 U.S.C. 801 (e)) would be in contravention of his constitutional rights and said statute should be declared to be unconstitutional.

Wherefore, plaintiff prays for an order and judgment of the court as follows:

1. That an order directed to the defendant Dean G. Acheson issue to provide that the plaintiff be granted a certificate of identity in order that he may be able to obtain transportation to the United States and be admitted under bond in the sum of Five Hundred Dollars (\$500.00) for the purpose of prosecuting his claim of citizenship in this court.

2. That a decree be entered herein adjudging plaintiff to be still a citizen of the United States and entitled to all the rights and privileges of a national of the United States.

3. That Section 401 (e) of Chapter IV of the Nationality Act of 1940 (8 U.S.C. 801 (e)) should be declared unconstitutional as contravening the constitutional rights of the plaintiff.

4. That plaintiff herein be granted such other and further relief as may be just in the premises.

/s/ TORU SAKAHARA,

/s/ GERALD SHUCKLIN,

Attorneys for Plaintiff.

EXHIBIT A

Form No. 348

Foreign Service

Established April 1944

Certificate of the Loss of the Nationality of the
United States

(This form has been prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940, 54 Stat. 1171)

Approved by
Department of State
February 23, 1951

Consular Service of the United States of
America at Kobe, Japan—ss.

I, D. J. Meloy, hereby certify that, to the best of my knowledge and belief, George Takehara was born at (town or city) Firwood (province, county) (state or country) Washington, on (Date) March 13, 1926;

That he resides at 1103-1 Tannowa-mura, Sennan-gun, Osaka-fu, Japan;

That he last resided in the United States at (Street) Route 12, Box 697, (City) Tacoma, (State) Washington;

That he left the United States on (Precise date should be given) October 28, 1935;

That he acquired the nationality of the United States by virtue of (If a national by birth in the United States, so state; if naturalized, give the

name and place of the court in the United States before which naturalization was granted and the date of such naturalization) birth in the United States;

That he has expatriated himself under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940 by (the action causing expatriation should be set forth succinctly) voting in the Japanese political election of April 5, 1947;

That the evidence of such action consists of the following (here list the sources of information and such documentary evidence as may be available concerning the action causing expatriation of the individual concerned): His sworn statements on Supplement to 213 and Questionnaire both dated February 27, 1950, certified statement from the Japanese Government regarding his voting record.

In Testimony whereof, I have hereunto subscribed my name and affixed my office seal this 11th day of (month) August, 1950.

[Seal] /s/ D. J. MELOY,
Vice Consul of the
United States of America.

Service No. 1219
No Fee Prescribed

Receipt of Copy acknowledged.

[Endorsed]: Filed November 13, 1951.

[Title of District Court and Cause.]

ANSWER

Comes now the above-named defendant and makes his answer to the complaint on file herein as follows :

I.

This defendant denies all the allegations in plaintiff's complaint based on plaintiff's present claim to United States nationality.

II.

This answer is made and filed with defendant's consent given under Rule 15(a) Federal Rules of Civil Procedure, to plaintiff to file an amended complaint, if plaintiff so desires.

Wherefore, defendant prays that plaintiff take nothing by his complaint, and that defendant be hence dismissed with his costs.

/s/ J. CHARLES DENNIS,
United States Attorney,

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

[Endorsed]: Filed July 27, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial on the 20th day of December, 1951, before the court, plaintiff appearing by his counsel Toru Sakahara and Gerald Shucklin, and defendant appearing through his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Guy A. B. Dovell, Assistant United States Attorney for said district, evidence, both oral and documentary having been introduced, and plaintiff's trial memorandum on the issues and law having been served and presented to the court and thereafter the defendant's brief and plaintiff's reply brief having been served and presented, and oral argument had on January 24, 1952, and the cause submitted for decision upon the evidence and the respective memoranda on the law, and the court being fully advised and having announced its oral decision, now makes the following:

Findings of Fact

I.

That the plaintiff, George Takehara, was born at Firwood in Pierce County, Washington, United States of America, on March 13, 1926, of Japanese-born parents who were Nationals of Japan, and by virtue of his birth, plaintiff was a citizen of the United States, and by virtue of the nationality of his parents plaintiff was at birth a National of Japan.

II.

That at the approximate age of 4 years, the plaintiff traveled to Japan for a visit with his grandparents on a 1928 passport issued to him when he was 2 years of age, and that after some months there, returned to the United States; that thereafter in the year 1935 at the age of nine years, the plaintiff in company with his older brother, again traveled to Japan to be with his grandparents and other relatives in Japan; that the brother returned to the United States in 1939, and the plaintiff remained in Japan and attended school during his minority and worked on a farm.

III.

That during World War II, the plaintiff was given a physical examination preliminary to serving in the Japanese armed forces, but did not meet the requirements of that service as to weight and height, and was rejected for that reason.

IV.

That plaintiff shortly after attaining his majority voted in the Japanese political election of April 5, 1947, during the military occupation of Japan by the Armed Forces of the United States.

V.

That thereafter on February 27, 1950, approximately three years after voting in said Japanese election, the plaintiff applied to a Vice-Consul of the United States at Kobe, Japan, for a passport as a national of the United States; that such application

was denied as evidenced by Certificate of Loss of Nationality of the United States issued by said Vice Consul August 11, 1950, and approved by the Department of State February 23, 1951, on the ground that plaintiff had expatriated himself under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940 (8 U.S.C.A. 801 (e)) by voting in the Japanese political election of April 5, 1947; and that thereafter on June 6, 1951, the plaintiff instituted this action under 8 U.S.C.A. 903 against the above-named defendant, Dean Acheson, Secretary of State of the United States, in the above-named district in which he claimed his permanent residence, for a judgment declaring plaintiff to be still a citizen of the United States.

VI.

That pursuant to Certificate of Identity No. 8 (1951) issued by the American Consular Service at Kobe, Japan, plaintiff was admitted to the United States under Section 3 (2) of the Immigration Act of 1924 as a temporary visitor for business for such period of time as necessary to prosecute his claim to United States citizenship, and for such time to the residence designated by the immigration service within this district.

VII.

That the evidence before the court reveals that the plaintiff in implicit obedience to his elders and without objection on his part at any time had grown up from early childhood as a Japanese National, completely forgetful of the language, customs and ways

of the land of his birth, and that neither at the time of nor at any time prior to the Japanese political election on April 5, 1947, had he then or on any other occasion asserted his claim to American citizenship or objected to being treated by his elders or the authorities as a Japanese National; and such being the situation and in view of the plaintiff's antecedents, his upbringing and schooling in the language, customs, habits and ways of Japan by those equally unobservant of anything attached or related to his becoming a National of the United States by choice, and in view of his naturalization as a Japanese National and his admitted ignorance of the effect of his voting upon his claim to American citizenship, it must follow that the plaintiff had no reason to abstain from voting in the Japanese political election of April 5, 1947, and did so as a natural consequence of a Japanese National's interest therein, by whatever inducement, and without any relation or reference to his claim to being a National of the United States.

Done in Open Court this .. day of, 1952.

/s/ JAMES ALGER FEE,

United States District Judge.

From the foregoing Findings of Fact, the Court now concludes:

Conclusions of Law

I.

That the court has jurisdiction of the subject matter of this action and of the parties hereto.

II.

That the Congress of the United States has the power to determine what acts shall constitute the sovereign's consent to expatriation, and the plaintiff by voting in the Japanese political election of April 5, 1947, lost his United States Nationality by reason of Title 8, U.S.C.A., Section 801, which so provides.

III.

That the plaintiff's action herein should be denied and dismissed, and that the defendant is entitled to recover his costs, and judgment should be entered accordingly.

The plaintiff, by counsel, has excepted to each and every adverse finding of fact and conclusion of law of the court hereinabove set forth, and said exceptions are hereby allowed.

Done in Open Court this .. day of, 1952.

/s/ JAMES ALGER FEE,
United States District Judge

Proposed and Presented by:

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

Lodged April 7, 1952.

Entered August 9, 1952.

[Endorsed]: Filed August 9, 1952.

United States District Court, Western District of
Washington, Southern Division

No. 1482

GEORGE TAKEHARA,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the
United States,

Defendant.

JUDGMENT OF DISMISSAL

This cause having come on regularly for trial on the 20th day of December, 1951, before the Court, plaintiff appearing by his counsel, Toru Sakahara and Gerald Shucklin, and defendant appearing through his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Guy A. B. Dovell, Assistant United States Attorney for said district, evidence both oral and documentary having been introduced, and plaintiff's trial memorandum on the issues and law having been served and presented to the Court, and thereafter the defendant's brief and plaintiff's reply brief having been served and so presented, and oral argument had on January 24, 1952, and the cause submitted for decision upon the evidence and the respective memoranda of the parties on the law, and the court being fully advised in the premises, and having heretofore on this day made and entered its Findings of Fact and Conclusions of Law wherefrom it appears that the plaintiff is not entitled to

the relief prayed for in his complaint; now therefore, and in conformity therewith, it is hereby:

Ordered, Adjudged and Decreed that plaintiff's complaint be and the same is hereby denied and this action dismissed; and the defendant be and he is hereby allowed judgment for his costs amounting to \$23.00.

The plaintiff, by his counsel, has excepted to each and every adverse ruling of the court hereinabove set forth, and said exceptions are hereby allowed.

Done in Open Court this .. day of, 1952.

/s/ JAMES ALGER FEE,
United States District Judge.

Proposed and Presented by:

/s/ GUY A. B. DOVELL,
Assistant United States
Attorney.

Lodged April 7, 1952.

Entered August 9, 1952.

[Endorsed]: Filed August 9, 1952.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial on the 20th day of December, 1951, before the court, plaintiff appearing by his counsel Toru Sakahara

and Gerald Shucklin, and defendant appearing through his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Guy A. B. Dovell, Assistant United States Attorney for said district, evidence, both oral and documentary having been introduced, and plaintiff's trial memorandum on the issues and law having been served and presented to the court and thereafter the defendant's brief and plaintiff's reply brief having been served and presented and oral argument had on January 24, 1952, and the court being fully advised, now makes the following:

Findings of Fact

I.

That the plaintiff, George Takehara, was born at Firwood, in Pierce County, Washington, United States of America, on March 13, 1926, of Japanese-born parents who were Nationals of Japan, and by virtue of his birth, plaintiff was and is a citizen of the United States.

II.

In 1935 the plaintiff George Takehara went to Japan with his brother Shoichi Takehara, who subsequently died in action as a member of the United States Armed Forces in Europe; in Japan they resided with their grandparents; in 1939 said brother Shoichi Takehara was recalled by their father to return to the United States; that it was the father's plan to have plaintiff George Takehara return to the United States at a later time; that plaintiff attended school in Japan during his minority and worked on a farm.

III.

During his stay in Japan plaintiff was not registered as a Japanese citizen except as hereinafter stated; that after Japan was at war with the United States plaintiff, as an American citizen, was required to and did report as an enemy alien to the Japanese police; that he was cautioned by the said police to obtain a permit to travel and forbidden to possess or carry a camera; that plaintiff's relatives exerted pressure on him to register with the Japanese authorities as a Japanese citizen on the ground it would relieve the family of stigma of an enemy alien relative; that plaintiff declined to register, but without his permission his cousin registered his name with the Japanese authorities.

IV.

That plaintiff attended school in Japan for nine years and did not have the benefit of English instruction as it was forbidden during the war years; that plaintiff was educated in a family and social background requiring implicit obedience to his elders, superiors and government authority and believed that failure to obey would be punished.

V.

That the plaintiff voted in a Japanese election on April 5, 1947, less than one month after he had become twenty-one years of age under the following circumstances: that there was an extensive campaign by radio and press urging everyone to vote; that the neighborhood governmental representative, known as the block leader, made a house-to-house canvass to get everyone to vote; that in the presence

of plaintiff the block leader told the members of plaintiff's grandfather's household to go to the polls to vote; that plaintiff's grandfather told plaintiff after going to the polls himself that Japanese police and American military police were at the polls and that if plaintiff did not vote he might get into trouble and lose his food ration card; that plaintiff's uncle told plaintiff that he was going to the polls and that plaintiff should come with him and vote, otherwise plaintiff would be punished and lose his ration card; that plaintiff went with his uncle to vote and saw armed American Military Police and Japanese police; that plaintiff did not know voting would cause loss of his citizenship; that plaintiff voted because of fear of punishment, duress, coercion and did not exercise a free, voluntary and intelligent choice.

VI.

That at the time of plaintiff's voting Japan was occupied by the United States and other United Nations armed forces.

VII.

That plaintiff's family consists of the following, all residing in Fife, Pierce County, Washington:

Yutaro Takehara, Father

Oito Takehara, Mother

Mitsuo Takehara, aged 20, brother, now in United States Army, American citizen

Sachiko Takehara, aged 13, Sister, American citizen

Takeo Takehara, aged 7, Brother, American citizen.

VIII.

That plaintiff was prevented from returning to the United States, which he wished to do, because of World War II; that after the termination of hostilities plaintiff went to the foreign office of the Governor of Osaka Province and was told that an American Consulate would be established in Kobe and that he should wait until that time; that later when said consulate was established plaintiff went there as an American citizen to apply for a travel document for the purpose of returning to the United States; that said application was denied and plaintiff brought this action under 8 U.S.C.A. 903, against the defendant in this district where plaintiff claims his permanent residence, for a judgment declaring plaintiff to be still a citizen of the United States; that plaintiff was allowed to come to the United States for the purpose of prosecuting this action.

Done in Open Court this .. day of, 1952.

.....

United States District Judge.

From the foregoing Findings of Fact, the court concludes:

Conclusions of Law

I.

That plaintiff George Takehara is entitled to have his United States citizenship confirmed by an appropriate decree of this Court which has jurisdiction under section 503 of the Nationality Act of 1940, Title 8, U.S.C.A. Section 903.

II.

That the voting by George Takehara in a Japanese election on April 5, 1947, was done by him through fear of punishment, duress and coercion, and was not a free and voluntary act nor a free and intelligent act.

Done in Open Court this .. day of, 1952.

.....

United States District Judge.

Proposed and Presented by:

/s/ TORU SAKAHARA,

/s/ GERALD SHUCKLIN,

Attorneys for Plaintiff.

Lodged April 10, 1952.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED DECLARATORY JUDGMENT OF CITIZENSHIP

This matter having come on to be heard before the undersigned Judge of the above-entitled Court upon the application of the plaintiff, George Takehara, under Title 8 U.S.C.A., Sec. 903, for a judgment declaring him to be still a citizen of the United States and the matter coming on regularly for hearing, the petitioner appearing in court both personally and through his counsel, Toru Sakahara and Gerald Shucklin, and the defendant appearing

through J. Charles Dennis, United States District Attorney, and Guy A. B. Dovell, Assistant United States Attorney, and the court having listened to the evidence introduced on behalf of the plaintiff and considered arguments, statements and briefs of counsel and having fully considered the matter and having heretofore filed its Findings of Fact and Conclusions of Law; now, therefore, it is hereby

Ordered, Adjudged and Decreed, that the plaintiff, George Takehara, is hereby declared to be still a citizen of the United States, by reason of birth in the United States, under the Fourteenth Amendment to the Constitution of the United States.

This judgment is made pursuant to and under the authority of Section 503 of the Nationality Act of 1940, Title 8 U.S.C.A., Section 903.

Done in open Court this day of, 1952.

.....

United States District Judge.

Proposed and Presented by:

/s/ TORU SAKAHARA,

/s/ GERALD SHUCKLIN,
Attorneys for Plaintiff.

Lodged April 10, 1952.

[Title of District Court and Cause.]

OPINION

January 24, 1952

James Alger Fee, District Judge:

A certificate of Loss of Nationality of the United States as to George Takehara was issued by the Vice-Consul of the United States at Kobe, Japan, on August 11, 1950, and approved by the Department of State on February 25, 1951. Upon this basis, his application for passport as a national of the United States was denied. The above-entitled action was instituted on June 26, 1951, on the allegation that the issuance of this passport was a right or privilege claimed by plaintiff as a national of the United States and denied by a department, agency of the government or an executive official thereof. The Secretary of State was named defendant as the head of the department or agency. He entered the United States upon the statutory certificate of identity provided in such cases.¹

The case was heard in open court. Plaintiff, upon whose testimony the case is based, largely testified through an interpreter. A good deal of his examination indicated to the Court that he was highly evasive, if not false in his testimony. Whenever the shoe pinched, he had a ready remedy.

There is no doubt of the fact that Takehara voted in a Japanese election. There is no doubt that he knowingly cast a ballot. He was not physically con-

¹ 8 U.S.C.A., § 903.

strained to do so. He testified only that his uncle and grandfather each suggested to him that he might lose his ration card if he did not vote. There was no proof offered that anyone ever lost a ration card for that reason.

Japan, at the time in question, although under military occupation by United States troops, was a foreign state. Congress had the power to enact a law that established the acts which, if knowingly and voluntarily done, would constitute a renunciation of citizenship.² Such statutes³ are constitutional.

Citizenship by birth in the United States cannot be renounced except by voluntary act of the citizen.⁴ But the act done voluntarily may result in renunciation even though it be neither a formal disclaimer nor express acceptance of allegiance to a foreign power or potentate. The act which causes loss of citizenship may be specified by enactment of congress. Although the act must be voluntary to accomplish the result, the citizen, while doing the act voluntarily, need not know that citizenship will be lost thereby in order to bring about that result.⁵

²"Congress has the power to say what act shall expatriate a citizen." *United States ex rel Wrona vs. Karnuth*, 14 F. Supp. 770, 771; *Mackenzie vs. Hare*, 239 U.S. 299.

³8 U.S.C.A. § 801(a)(e).

⁴*Perkins vs. Elg*, 307 U.S. 325, affirming 99 F. 2d 408. See also *in re Reid*, 6 F. Supp. 800, reversed 73 F. 2d 153, but recognized in *Perkins vs. Elg*, at page 349, note 31.

⁵*Savorgnan vs. United States*, 338 U.S. 491; *Boissonnas vs. Acheson*, 101 F. Supp. 138.

The only question is one of fact.⁶ Most courts seem to have attempted to repeal the statute by a "liberal" interpretation of the word "voluntarily." With these interpretations, the Court does not agree.

In any event, in this case the Court finds the act of voting was voluntarily done. Takehara applied for Japanese citizenship on January 12, 1943, when he was sixteen years and ten months of age. The petition was granted some weeks later. The Court does not accept the statement that he was registered without his consent. He was treated as a Japanese national and was given a physical examination preliminary to serving in the Japanese armed forces, but was rejected because he did not meet the requirements as to weight and height. Shortly after attainment of his majority, Takehara voted in a Japanese political election on April 5, 1947. About three years thereafter, plaintiff, when about twenty-four years old, applied to a Vice-Consul of the United States for a passport as a national of the United States. This petition was denied on the ground that Takehara had expatriated himself by voting in this 1947 election.

The Court does not accept the story that he voted because he feared the loss of his ration card, but does believe that plaintiff obeyed a direction of his grandfather and uncle, both citizens of Japan, to vote at the election and that he did not know that

⁶*Kawaleita vs. United States*, 72 Sup. Ct. 950. See also *Acheson vs. Okimura*, 72 Sup. Ct. 293, and *Acheson vs. Murata*, 72 Sup. Ct. 294.

the act would cause his expatriation. In any event, the fear of loss of a food rationing card is not sufficient to raise the doctrine of duress in commercial transactions, and no good reason is seen why it is acceptable in an important transaction of this type.

But, if that were not the case, Takehara lost his citizenship by his conduct of which voting is a minor factor. He was born in the United States in 1926. A passport was issued to him when he was two years old, and upon this he was taken to Japan where he remained for some months. In 1935, when nine years old, he again was taken to Japan to be with his grandparents and other relatives, and has ever since remained there until brought to this country to prosecute this case. He was brought up with the native Japanese tradition and educated in a family and social background requiring implicit obedience to his elders and the Imperial Government of the Emperor. He was educated exclusively in Japanese schools and, upon failure to obtain a sufficient mark to become an officer in the Japanese army, served as teacher in the official schools. He has no education in English or training in our form of government.

Against this background, his actions indicate a definite choice of Japanese citizenship exercised after he had attained majority. American citizenship by birth cannot be lost involuntarily, but it can be lost by voluntary conduct after majority by one who, by virtue of his residence, his official registra-

tion, his ancestry and members of his family, is entitled to Japanese citizenship.⁷

The mere fact that the elders of the Japanese clan to which plaintiff belongs have now decided that he should seek to recoup this birthright which he has renounced and that he has obeyed them is of no consequence. Since responsibility is individual, as well as allegiance, it would seem impertinent that a brother of plaintiff was killed in our service during the war and that another is presently in the army.

In this day of conflicting ideologies, the courts would be remiss if, for the purpose of indicating a lack of race prejudice, there were a deviation by rationalization from the statutes enacted by congress for protection of the country.

The petition is denied (1) because plaintiff's actions show clearly that he chose Japanese citizenship after arriving at majority, and (2) because he renounced American citizenship in the manner prescribed by acts of congress by voluntary voting at a Japanese election.

[Endorsed]: Filed July 24, 1952.

⁷United States vs. Yasui, 48 F. Supp. 40, 54, affirmed on other grounds, 320 U.S. 115.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Dean G. Acheson, Secretary of State of the United States; and J. Charles Dennis, United States Attorney, and Guy A. B. Dovell, Assistant United States Attorney.

Notice is hereby given that George Takehara, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on the 9th day of August, 1952.

/s/ GERALD SHUCKLIN,

/s/ TORU SAKAHARA,

Attorneys for Appellant,
George Takehara.

[Endorsed]: Filed August 19, 1952.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That the undersigned, George Takehara, plaintiff in the above-entitled action, as principal, and the United Pacific Insurance Company, a corporation, organized under the laws of the State of Washington, and authorized to transact the business of surety, as surety, are held and firmly bound unto the United States of America for the benefit of whom-

soever it may concern in the penal sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made, the said principal and the said surety bind themselves, their heirs and personal representatives or successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of August, 1952.

Whereas, on the 9th day of August, 1952, the above-entitled court rendered and entered a judgment in the above-entitled cause and against the above-named principal, and

Whereas, the said plaintiff feeling aggrieved by said judgment and desiring to appeal from the same to the United States Court of Appeals, Ninth Circuit; and perfect said appeal by this bond.

Now, Therefore, the condition of the obligation is such that if the said appellant will pay all costs and damages that may be awarded against him on said appeal or on the dismissal thereof, not exceeding Two Hundred Fifty and No/100 (\$250.00) Dollars, then this obligation shall be void, otherwise to remain in full force and virtue.

GEORGE TAKEHARA,

By /s/ GERALD SHUCKLIN,

By /s/ TORU SAKAHARA,

His Attorneys.

[Seal] UNITED PACIFIC INSUR-
ANCE COMPANY,

By /s/ A. L. WING, JR.,
Attorney-in-Fact.

Countersigned:

By /s/ W. E. EVANS,
Resident Agent,
Seattle, Wash.

[Endorsed]: Filed August 19, 1952.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF
POINTS ON APPEAL

The following is a statement of Points on which appellant intends to rely on appeal:

I.

That the Court erred in not adjudging and not finding that George Takehara is a citizen of the United States of America.

II.

That the Court erred in not finding and not adjudging that the voting of George Takehara in the April, 1947, election in Japan was done because of fear of punishment, duress or coercion and the Court erred in not adjudging and not finding that such voting was not the free, voluntary and intelligent choice of George Takehara.

III.

That the Court erred in rejecting the doctrine of duress as applied to voting in foreign political elections.

IV.

That the opinion, findings of fact, conclusions of law, and judgment of dismissal entered by the Court are contrary to evidence and contrary to the law governing the case.

V.

That the Court erred in not finding and not adjudging that Japan was not a foreign state at the time of the said election under Title 8 U.S.C.A., Section 801(e).

VI.

That the Court erred in not finding and not adjudging Title 8 U.S.C.A., 801 (e), as in contravention of his constitutional rights.

VII.

That the Court erred in refusing to make and enter plaintiff's proposed findings of fact, conclusions of law and erred in refusing to make and enter plaintiff's proposed Declaratory Judgment of Citizenship.

/s/ TORU SAKAHARA,

/s/ GERALD SHUCKLIN,

Attorneys for Plaintiff and

Appellant George Takehara.

Receipt of copy acknowledged.

[Endorsed]: Filed August 29, 1952.

In the District Court of the United States for the
Western District of Washington, Southern
Division

No. 1482

GEORGE TAKEHARA,

Plaintiff,

vs.

DEAN C. ACHESON, Secretary of State of the
United States,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Before: James Alger Fee, United States District
Judge.

Appearances:

TORU SAKAHARA, ESQ., and
GERALD SHUCKLIN, ESQ.,

Appeared on Behalf of Plaintiff.

GUY A. B. DOVELL, ESQ.,

Assistant United States Attorney,

Appeared on Behalf of Defendant.

Whereupon, the following proceedings were had,
to wit:

The Clerk: Cause No. 1482, George Takehara
vs. Dean Acheson, Secretary of State, trial to the
Court. Toru Sakahara and Gerald Shucklin for the
Plaintiff and Guy A. B. Dovell for the Defendant.

The Court: You may proceed.

Mr. Shucklin: Your Honor, may I submit plaintiff's memorandum of authorities? I have given a copy to counsel for the defendant. May it please the Court, the evidence will show in this case that the plaintiff, George Takehara, of Japanese ancestry was born in Firwood in this county in the State of Washington on March 12, 1926, and is a citizen of the United States by virtue of the Fourteenth Amendment to the United States Constitution; that he claims his permanent residence is with his father and mother in Fife, just outside of Tacoma in this county. The evidence will further show that his family consists of his father, his mother, a brother, age twenty-one, who is in the United States Army, a sister age, thirteen, attending school, a brother, age seven, attending school; that all of these children live with their parents with the [2*] exception of the boy in the Army, at Fife. The father is a farmer. Another brother, who is now deceased, was killed while a member of the United States Armed Forces, killed in action in Europe in April of 1945. In 1936, when the plaintiff was nine years old, he and the brother who was later killed in action, were sent by their father to Japan to be with their grandparents. There were certain reasons for sending them to be with the grandparents. The grandparents were lonely and the father wanted the boys to be educated in both languages. In 1939 both brothers were to return to Tacoma or Fife, but after consideration by the father, because the grandfather and the grandmother were getting more infirm, it was decided that George, the plaintiff, should re-

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

main to take care of them on the farm awhile and that the other brother should return. So the plaintiff stayed with the grandparents and his brother came back to the United States. Now, George Takehara's schooling in Japan consisted of six years of primary school and three years in middle school, which apparently coincides with our junior high school. [3] During the war he went to an electrical school, but did not become an electrician but remained a farmer. The evidence will further show that he was educated and brought up where obedience was instilled in him and that disobedience meant strict disciplinary measures which could be taken by one higher up in the family or a higher official, or one in a higher social position. The evidence will further show that the Japanese authorities were very strict during the war and, for example, the plaintiff, although he never served in the Japanese armed forces, he was called up for a physical examination. Before the examination commenced he was asked to give his height and weight. When he was actually measured and weighed, the results were somewhat different from what he said and for giving incorrect information the plaintiff was slapped and struck by the military authorities. And the evidence will further show that also, for instance, anyone wearing white clothing during an air raid was struck and beaten by the authorities. The evidence will further show that at no time did the plaintiff have any [4] intention whatsoever to lose or give up his American citizenship. The evidence will further show that the plaintiff intended

to come back to the United States at his first opportunity after the war. Now, during the war, the evidence will show that he was considered to be an alien because he was born in the United States and he was required to report to the authorities. His relatives remonstrated with him and wanted him to register his birth with the authorities. However, he did not want to do it and one of the members of his family actually registered him. This later gave him a basis on which to vote in a Japanese election. After the war was over he went to the office of the Japanese Governor in his district to see about returning to the United States, but he was told at that office that there would be an American consulate open at Kobe which was near Osaka where he lived and that he should wait. So later when an American consulate was established at Kobe, he went there and made application for a travel document to come to the United States. The evidence will further show that prior to the Japanese elections in 1947 [5] the Japanese people were told by newspaper, radio and political speeches that in order to build a new Japan and a democratic country everyone should vote; that this was reiterated over and over again. The plaintiff was advised that it was his duty to vote and under Japanese authority that meant that obedience was virtually automatic. Now, on the day of the elections he was told by his grandfather to go to vote. The grandfather was the head of the household and had authority over him, and that if he didn't vote, otherwise he might lose his ration card. He also was

told this by his uncle who lived in, I think, the next house, Mr. Seiji Fujihara, who told him to go to vote, that otherwise he would lose his ration card and receive other punishment. In addition to that, on election day the liaison people came around and urged that he vote. Committees of school children came and asked that he vote. In addition to that, the head of his block came and advised him to vote. Now under the system over there, every year the heads of ten or so houses get together and elect one to act as head of that particular [6] neighborhood block. It was this block captain, so-called, who was a representative of the Japanese authorities who came to him and told him to go to the polls. When he went to the polls and prior to going to the polls, he heard that American military police were there. The evidence will further show that the plaintiff did not exercise his free and intelligent choice in voting but that the voting was done under duress. The evidence will further show that neither did he intend to lose his American citizenship, nor did he know that he would lose his American citizenship if he voted. The evidence will further show that the first time he learned that his citizenship was in jeopardy was when he made application to the American consulate at Kobe, Japan, for authority to come to the United States. After he was refused this travel document on the grounds of expatriation by reason of voting in a foreign state, this particular action was brought under Title 8 U.S. Code, Section 903, which in general provides that if anyone who claims a right as a national of the

United States and is denied [7] that privilege by an official of the United States, he has a right to institute an action in the District Court of his permanent residence for a judgment declaring him to be a national of the United States, after which the plaintiff has a right to come to the United States for the purpose of prosecuting his action. And he was allowed to come to the United States for the purpose of prosecuting this action. It is our contention that the plaintiff is an American citizen by reason of birth and that he never expatriated himself. The particular statute involved is Title 8, U.S. Code Annotated, Section 801, which states in part: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; * * * ." Now the plaintiff in this case can prevail if the Court finds one, two or all of the following propositions: (1) that plaintiff was not in a foreign state at the time of the elections or that the plaintiff voted under duress, or that Title 8, [8] U.S. Code Annotated, Section 801, is unconstitutional. I don't assume, your Honor, that you wish me to go into the legal propositions at this time?

The Court: No.

Mr. Shucklin: Your Honor, in our memorandum of authorities, we refer to a State Department publication called "Occupation of Japan" which we offer for your use in this case if your Honor wishes

to refresh your judicial notice on any of the subjects concerning instrument of surrender, allied authority, Japanese Bill of Rights, the Japanese draft of the constitution, and in my memorandum of authorities I have the page references, your Honor.

The Court: Yes, I noticed it.

Mr. Shucklin: I might state in order to shorten the issues here and the argument, that the Circuit Court of Appeals of this particular circuit decided in *Kuniyuki vs. Acheson*, 189 Fed. 2d, p. 741, that in effect Japan was a foreign state. Your Honor, it will be necessary to use an interpreter. May I have the interpreter sworn at this time? [9]

FRANK HATORI

being first duly sworn on oath, was called as an interpreter on behalf of plaintiff, and all testimony hereafter given by plaintiff, shall be considered correctly interpreted by said interpreter.

The Court: Will you place a chair for the interpreter?

Mr. Shucklin: I'd like to call Mr. Yutara Takehara. It will not be necessary to use an interpreter with this particular witness, your Honor. [10]

YUTARO TAKEHARA

being first duly sworn on oath, was called as a witness on behalf of plaintiff, and testified as follows:

Direct Examination

By Mr. Shucklin:

Q. State your name please,

A. Yutaro Takehara.

The Court: Speak up.

Q. Will you please state your name?

A. Yutaro Takehara.

Q. Where do you reside; where do you live?

A. Now?

Q. Yes. A. Fife, Washington.

Q. Is that in Pierce County? A. Yes.

Q. And how long have you lived there, Mr. Takehara? A. Since 1920.

Q. You have lived in Pierce County since 1920?

A. Well, I have lived in Firwood.

Q. Is that in Pierce County? A. Yes.

Q. And then when did you move to Fife?

A. Oh, around 1920.

Q. Of what does your family consist? [11]

A. What?

Q. I will clarify that. Do you have a wife?

A. Yes.

Q. And does she live with you? A. Yes.

Q. And how many children do you have now?

A. Four right now.

Q. And will you give their names and ages.

(Testimony of Yutaro Takehara.)

A. From the oldest?

Q. Any way.

A. George Takehara, then Mitsuo Takehara, Sachiko and Takeo Takehara.

Q. Will you tell us, how old is George?

A. Twenty-five.

Q. And where was George born?

A. Born in Firwood, Washington.

Q. On what date? A. March 13, 1926

Q. 1926? A. Yes.

Q. Do you see him in the courtroom?

A. Today?

Q. Your son George. A. Today?

Q. Yes. A. Yes, right there. [12]

Q. Do you see him in the courtroom?

A. Yes.

Q. Would you point out the man who is your son George? A. The first from the left.

Q. Would you ask him to stand up?

A. George, stand up.

(Whereupon, George Takehara stood up.)

Q. That is your son? A. Yes.

Q. Now, what does Mitsuo Takehara, one of your sons do? A. He is in the army right now.

Q. And how old is he? A. Twenty-one.

Q. And he is in the courtroom today?

A. Yes.

Q. And how old is Sachiko? A. Thirteen.

Q. That is a daughter? A. Yes.

Q. And Takeo? A. That is a boy.

Q. A son, and how old?

(Testimony of Yutaro Takehara.)

A. Seven years old.

Q. Would you speak a little louder, please. Did you [13] have another child? A. No.

Q. Did you have another son who died?

A. Yes.

Q. And what was his name?

A. Shoichi Takehara.

Q. And how did he die?

A. He died in action in Europe.

Q. While he was in the Army? A. Yes.

Q. In what year? A. In 1945.

Q. What is the permanent residence of your son George Takehara?

A. What does that mean? I don't quite understand.

Q. Where does your son live? George, where does he live now? A. Now, at Fife.

Q. He is with you now? A. Yes.

Q. Did you ever send your son George to Japan?

A. Yes.

Q. And in what year? A. 1935.

Q. And how old was he? [14]

A. He was nine years old.

Q. Did you send anyone else with him at that time? A. Yes.

Q. And who? A. Shoichi.

Q. Your son, Shoichi? A. Yes.

Q. How old was he at that time?

A. He was eleven years old.

Q. And for what reason did you send them to Japan?

(Testimony of Yutaro Takehara.)

A. For schooling and for the parents were kind of lonesome and wanted me to send them over.

Q. Your parents, your father and mother?

A. Yes.

Q. And where did they live?

A. They lived in Tannowa-mura, Sennan-gun, Osaka-fu, Japan.

Q. Did you have any intention that they come back to live with you? A. Yes.

Q. And when were they to come back?

A. Well, Shoichi come back in 1939.

Q. And how about—did you make any arrangements to have George come back?

A. Yes, but at that time I was bringing two boy with [15] me, but grandparent was kind of lonesome so he wanted me to leave one son there and bring one with me.

Q. Is that what you did? A. Yes.

Q. Did you obey your parents then?

A. Yes.

Q. And how long did you intend for him to be there then after that?

A. Well, I was figuring about a couple of years or so.

Q. Then he was to come back home?

A. Yes.

Q. Did you also consider that your home was his home? A. Yes.

Q. That he was just there temporarily?

A. Yes.

(Testimony of Yutaro Takehara.)

Q. Did you later then make arrangements to have George come back?

A. Well, I was trying to, but started war so I can't do anything.

Q. Because of the war, and then after the war what did you do?

A. I was trying to make arrangements, but was pretty hard to.

Q. Did you do anything? [16] A. Yes.

Q. Did you register the birth of any of your children in Japan? A. Yes.

Q. Which ones? A. Well, two of them.

Q. And who were they?

A. George and Shoichi.

Q. You didn't register George yourself?

A. No.

Q. But Shoichi was? A. Yes.

Q. Did you withdraw the registrations?

A. Yes.

Q. When did you do that?

A. It was about 1930.

Q. In 1930 you withdrew the registrations?

A. Yes.

Q. Let's see, how old would George be then, at that time, four years old?

A. Four years old, yes.

Q. You withdrew it from the Japanese registry, is that right? A. Yes.

Q. And you gave George an American first name, didn't [17] you? A. Yes.

Q. Did you give him a Japanese first name?

(Testimony of Yutaro Takehara.)

A. No.

Mr. Shucklin: That is all, you may question.

The Court: You may be excused from the stand.

(Whereupon, witness was excused.)

The Court (Continuing): I have some more matters to take up.

(Whereupon, other matters were considered.)

The Court: Recall the witness, you may proceed.

YUTARO TAKEHARA

having been previously sworn on oath, was recalled as a witness on behalf of plaintiff and testified as follows:

Further Direct Examination

By Mr. Shucklin:

Q. How long have you lived in the United States, Mr. Takehara? A. Since 1908.

Q. 1908? A. Yes.

Mr. Shucklin: You may examine.

Cross-Examination

By Mr. Dovell:

Q. Mr. Takehara, I understood you to testify that George and another of your sons went to Japan. In [18] what year did you say?

A. 1935.

Q. 1935? A. Yes.

Q. And how did they travel, on what papers did they travel?

(Testimony of Yutaro Takehara.)

A. They traveled on a boat.

Q. Did they have a passport? A. Yes.

Q. What was the date of that passport, do you recall? Was it taken out just before they left?

A. Yes.

Q. In 1935?

A. Yes—no, that passport was—we went back to Japan when George was a little boy, you know. The first we went back we had a passport that time and after the second trip they didn't have any passport with them.

Q. You mean you went back on a first trip on a passport? A. Yes.

Q. What year was that?

A. That was—I am not—I can't tell exactly what year.

Q. Would you say it was 1928, six or seven years before? A. Yes. [19]

Q. And that time you took the boys with you to Japan? A. Yes.

Q. How many? A. Two.

Q. The same two that went later, that is, George and his brother? A. Yes.

Q. And what did you do with them then, bring them back with you? A. Yes.

Q. And then it was later, in 1935, that you sent them to the grandparents? A. Yes.

Q. And at that time no passport was required?

A. No, we had the first passport so they take that with them.

Q. Showed that first passport? A. Yes.

(Testimony of Yutaro Takehara.)

Q. At the second trip had the boys been going to school before that time? A. Yes.

Q. Had they learned to speak English?

A. Yes.

Mr. Dovell: I believe that is all.

Mr. Shucklin: That is all.

(Witness excused.) [20]

GEORGE TAKEHARA

being duly sworn on oath, was called as a witness on his own behalf and testified through an interpreter as follows:

Direct Examination

By Mr. Shucklin:

Q. State——

The Court: I want to ask him, does he recognize the validity of that oath?

Interpreter: Yes, I believe so, your Honor.

The Court Don't tell me, you don't know. Ask him.

The Witness: Yes.

The Court: Is he a Christian?

The Witness: No.

The Court: What is his religion?

The Witness: Buddhist.

The Court: Does a Buddhist recognize the validity of the oath as just administered?

The Witness: I will recognize it.

The Court: But is there a form of oath accord-

(Testimony of George Takehara.)

ing to his Buddhist religion which is more binding upon him than this formal oath?

The Witness: I will think it is about the same.

The Court: In any event he recognizes that this oath subjects him to the penalties of perjury in the event that he doesn't tell the truth? [21]

The Witness: Yes, I understand.

The Court: All right, you may proceed.

Q. What is your name?

A. George Takehara.

Q. What is your permanent residence?

A. Fife, Washington.

Q. Was that his permanent residence at the time this action was commenced, this case was commenced? A. Yes.

Q. With whom does he reside at Fife, Washington? A. My parents and sister and brothers.

Q. What is your father's name?

A. Yutaro Takehara.

Q. Is he the gentleman who just testified prior to his getting on the stand? A. Yes.

Q. When and where were you born?

A. Firwood, Washington, 1926.

Q. What date? A. March 13, 1926.

Q. 1926? A. Yes.

Q. Are you an American citizen by birth?

A. Yes.

Q. How long did he live in the United States prior to going to Japan? [22]

A. Nine years.

Q. When did you go to Japan?

(Testimony of George Takehara.)

A. November, 1935.

Q. And with whom did he go to Japan?

A. My brother, Shoichi.

Q. With whom did you and your brother stay when you were in Japan?

A. My grandfather and grandmother.

Q. Were you taught to be obedient to your grandparents? A. Yes.

Q. And did you do the things that were requested by your grandfather or ordered by your grandfather? A. Yes.

Q. Were you taught to obey your parents, grandparents and governmental authorities?

A. Yes.

Q. If you were not obedient did you believe that you would be disciplined? A. Yes.

Q. Did you attend school in Japan?

A. Yes, I went.

Q. How many years? A. Nine years.

Q. Was he taught English, were you taught English? [23] Were you taught English during that period? A. No, they never taught me.

Q. How long did your brother stay in Japan?

A. I believe about four years.

Q. Did you ever serve in the Japanese Army?

A. No.

Q. Was he ever called up for a physical examination? A. Yes.

Q. Will you tell what transpired during that examination? A. Yes.

(Testimony of George Takehara.)

Q. Please relate what happened during the examination.

A. When I went to the examination I noticed that Japanese orders were very strict. Whatever I said if it was wrong they kicked me and struck me and myself I be struck about four times.

Q. And what was the reason that you—for what reason was he struck?

A. Well, they measured my height and it was wrong what I said before. Therefore they call me a liar and struck me. When they ask me some questions my voice was a little hard to hear they told me and at the same time they struck me again.

The Court: What had he said before about his height? [24]

The Witness: I be struck about four times.

The Court: No, I didn't ask him that. I said what did he say before about his height that was proven wrong?

The Witness: They ask me just what my height is and I say just about so high.

The Court: How high?

The Witness: 1.57 meter.

The Court: What did it turn out to be when they measured him?

The Witness: I don't exactly remember what I said, but anyway it was wrong and I was very—they struck me again and they scold me at that time. I can't remember exactly what I said how high I was.

The Court: Isn't it a little strange that he

(Testimony of George Takehara.)

doesn't remember an important incident like that?

The Witness: I don't remember.

The Court: All right.

Q. Do you remember the difference in meters between the height you stated and the height they measured? A. About 10 centimeter.

Q. I don't get that?

The Court: Ten centimeters. [25]

Q. (Continuing): Taller or shorter?

A. Shorter.

Q. They measured you shorter?

A. Yes, I said it a little taller than actually myself.

Q. Do you recall what disciplinary measures were taken by Japanese authorities against anyone wearing white clothing during an air raid?

A. Yes, I do know.

Q. What measures were taken?

A. Well, the military police and the regular city police were after me and told me off that I was wearing wrong.

Q. What did they do?

A. At that time I was scold and was told to change my suit, but I didn't have anything to change so I was asked to stay at a particular spot.

The Court: White clothing is the costume of mourning, isn't it?

The Witness: Does white clothing mean something like shirts?

The Court: I am not answering questions for

(Testimony of George Takehara.)

you. Answer my question. Isn't that the costume of mourning in Japan?

The Witness: Yes, we wear during the summer season.

Q. I think the question meant mourning for a dead [26] person.

The Witness: They wear black clothing.

The Court: Oh, isn't it true that General MacArthur made the Japanese envoys asking for an armistice come to the Philippines in a white airplane?

The Witness: I don't know.

The Court: As a matter of fact they refused to come and he insisted that he wouldn't receive them unless they came in a white airplane. Doesn't he know that?

The Witness: I don't know.

The Court: Does he mean to say that he doesn't know that the custom of wearing white clothing is the custom of mourning or defeat in Japan?

The Witness: Well, sometime ago I understand that somebody died, if he or she is a very close relative such as husband, the wife used to wear white clothing meaning that she wouldn't be re-married again.

The Court: All right, let's go ahead.

Q. During the war was your birth registered with the Japanese authorities? A. Yes.

Q. And at whose request? [27]

A. My grandmother asked my cousin to register.

Q. And for what reason?

(Testimony of George Takehara.)

A. At that time I was a foreigner and twice a year I was to report to the police station. The police told me that since I am a foreigner that every time I travel, even for a day, I have to make a report and I am not to carry any camera at all.

Q. Did your relatives request that this be done?

A. All my relatives urged me to register, also the village officer asked me to register.

Q. And what was his authority?

A. I do not know what his authority is, but he was working in registration department.

Q. Did his relatives feel it was a disgrace on the family because he was an alien?

A. I believe they did.

Q. Did you ever intend to lose your American citizenship? A. No, I have not.

Q. Did you, although the war was on between Japan and the United States, did you intend to come back to the United States and be with your family as an American citizen?

A. Yes, I was thinking about it all the time.

Q. After the war was over did you make any efforts to [28] get in touch with your family about coming back to the United States?

A. Yes, I have.

Q. And what did you do?

A. I didn't know exactly what to do, but right after the war my parents sent me a letter to come back to the United States immediately. Therefore I went to the Foreign Department in the Governor's office and asked them what to do.

(Testimony of George Takehara.)

Q. And then was that before he became twenty-one years of age?

A. I think I was twenty-one then.

Q. Now, what was he told at the Governor's office?

A. I was told that there was an American consulate office in Yokahama but in the very near future there will be an American consulate established in Kobe so it will be more convenient for you so you had better wait until then.

Q. Did he wait until the American consulate was opened in Kobe?

A. I want to go to Yokahama but I couldn't make it so I waited until the American consulate in Kobe was established.

Q. In 1947, in April, were elections held in Japan? A. Yes. [29]

Q. Did you hear about the election, among other things, through the newspapers, radio and political speeches? A. Yes, it is so.

Q. What was said about participation of the people in the elections?

A. Well, we were told that we should cooperate with Japan Government and everybody should go for the election.

Q. Did you consider that as a request directed to you to vote? A. I thought it was requested.

Q. Will you explain the election participated in by the heads of houses or families in the neighborhood for a leader?

The Interpreter: I beg your pardon?

(Testimony of George Takehara.)

Q. (Continuing): Would you explain the elections held in a block or neighborhood for the election of a block leader or captain?

A. Block leader or head of the block.

Q. And who participates in such elections?

A. Well, there is a block leader or head of the block and those people are participating in the community services.

Q. Who elects them? [30]

A. The master of the household of each family.

Q. And what are the duties and authority of the block leader?

A. He will get the order from the village officer and he is more or less a liaison person to us.

Q. Did he transmit the orders and wishes of the village officer to the individuals in that block or neighborhood? A. Yes.

Q. What elections, if you know, were held in Japan in April of 1947?

A. For the congressman, for the governor, for the mayor, village master, education committee.

Q. What is that, one election held on one day or was it one election held in a series?

A. There was—the election was separated in four days and there were two elections for each day.

Q. Were they elections divided as to officials to be elected?

A. Each election was separated as a congressman, governor, mayor, village master, village committee, and so forth.

(Testimony of George Takehara.)

Q. Were you contacted by the block leader to vote?

A. The block leader visit every family and asked them to go to the poll. [31]

Q. Did the block leader visit you?

A. He didn't talk to me directly.

Q. To whom did he talk?

A. He was talking to my grandfather to go to the election.

Q. And thereby to get the grandfather to get the rest of the family to go to the poll?

A. Yes.

Q. And did the block leader talk to his grandfather in his presence? A. Yes, I was there.

Q. You were there. Did you have a conversation with your grandfather about going to the polls to vote?

A. At the date of the election my grandfather was talking to me.

Q. And what did he say to you?

A. My grandfather went to election before I did. When he returned he told me that there was a Japanese police and also some military police at the poll and they were walking back and forth and when the grandfather told me that if you don't go to poll maybe you may get into trouble such as they might cancel your food ration card or you might be involved in some other trouble and all the neighbors are talking about it, so you had better hurry up and [32] go.

(Testimony of George Takehara.)

Q. Were the military police—withdraw that. What was the nationality of the military police?

A. The army of the United States.

Q. Were there Japanese police there also?

A. Yes, they were together with the military police.

Q. Did you also have a conversation with your uncle, Seiji Fujihara? A. Yes, I have.

Q. Did he request that you go to the polls?

A. Yes, he did at the day of the election.

Q. And what did he tell you?

A. The uncle told me that, "If you don't go to the election at this time you might get involved in a very deep trouble. I am going now so you might as well come along with me."

Q. Did he say anything else?

A. The uncle told me whatever my grandfather told me, conveyed the same message to me.

Q. Did you then go to the polls?

A. Yes, I went with my uncle.

Q. And did you see American military police at the polls? A. Yes, I saw some.

Q. Were they armed? [33]

A. I believe they had a stick and revolver.

Q. And were the Japanese police armed?

A. The Japanese police carries the pistol at all time.

Q. Did they at that time?

A. The police didn't have any arms at that time.

Q. The Japanese police didn't? A. Yes.

Q. Did other people urge you to vote besides the

(Testimony of George Takehara.)

block captain, your grandfather and your uncle?

A. The school children were coming around many times urging everybody to vote.

Q. Did you know at the time that you participated in the April elections that you might be jeopardizing your status as an American citizen?

A. I didn't know absolutely.

Q. I am going to ask it again. I understand the meaning, but it might look different in the print. Did you know that you might be jeopardizing your American citizenship by voting in the elections in April? A. I didn't know.

Q. You didn't know. Did you ever vote after the April elections? I mean April elections of 1947, to clarify it for the record.

A. No, I have not. [34]

Q. Did he vote prior to the April elections of 1947? A. No, I have not.

Q. Did you go to the American consulate at Kobe, Japan? A. Yes, I have.

Q. And did you make application to return to the United States?

A. I went there to get the form, application form.

Q. Did you make application?

A. At that time they told me that once I voted they wouldn't give out any forms so I couldn't make any application at that time.

Q. When was the first time you found out that voting in the elections in Japan would jeopardize your American citizenship?

(Testimony of George Takehara.)

A. It was after about six months of election when I went to American consulate I found out.

Q. Did you answer certain questions put to you by the American consul or his representative or an interpreter for the American consul?

A. Yes, I have.

Q. Did you receive from the Vice Consul of the United States at Kobe a copy of a certificate stating that you lost your nationality because of voting in the Japanese political election of April 5, 1947? [35]

A. I received a notice around June of this year.

Mr. Shucklin: Plaintiff's Exhibit 1.

The Clerk: Plaintiff's Exhibit 1 marked for identification.

(Plaintiff's Exhibit 1 marked for identification.)

Q. Handing you plaintiff's Exhibit 1 for identification, I ask you to look at the two papers and state whether or not you received them from the United States consulate?

A. Is this the paper for losing the citizenship?

Mr. Shucklin: That is in English, your Honor, and I ask permission to advise him that it is.

The Court: Yes.

Q. Yes.

A. Yes, the paper is sent by the mail to me.

Mr. Shucklin: I offer Plaintiff's Exhibit 1 in evidence after Mr. Dovell has a chance to look at it, your Honor.

Mr. Dovell: No objection.

(Testimony of George Takehara.)

Mr. Shucklin: I offer it.

The Court: Plaintiff's Exhibit 1 admitted.

The Clerk: Plaintiff's Exhibit 1 admitted in evidence.

PLAINTIFF'S EXHIBIT No. 1

[Plaintiff's Exhibit No. 1 is identical to Exhibit A attached to the amended Complaint. See page 7 of this printed record.]

Admitted in evidence December 20, 1951.

Mr. Shucklin: You may examine. [36]

Cross-Examination

By Mr. Dovell:

Q. George, do you remember your first trip to Japan?

A. I don't remember anything when I went there when I was four years old, but I remember the second time I went when I was nine years old.

Q. Do you remember when you went to Japan that you could talk English?

A. Yes, I could talk a little bit.

Q. Had he been to school in America?

A. Yes, I went to school.

Q. How many years?

A. About three years I believe.

Q. And on his second trip to Japan who went with him?

(Testimony of George Takehara.)

A. My brother Shoichi and Yorksusa Sakahara.

Q. Who?

A. My brother Shoichi and Yorksusa Sakahara.

Q. Any relation to him?

A. He was a person was living in the same village and was working together.

Q. After he grew up in Japan did he take, participate in the Japanese customs in the way of sports and going to school? A. Yes.

Q. He entered into the social life of the Japanese [37] people? A. Yes.

Q. Did he ever intend to acquire Japanese citizenship? A. Not for myself.

Q. Did he——

The Court: That question was hardly accurate. The question wasn't whether he wanted to acquire Japanese citizenship, the question was whether he wanted to accept Japanese citizenship because as I understand the international features of it, the claims were made by the Empire of Japan, or the Emperor of Japan that a Japanese born of Japanese nationals in the United States still acquired Japanese citizenship and the duty and obligations of royalty to the Emperor. So the question is whether he intended to accept Japanese citizenship and assume its responsibilities.

Q. (Continuing): Did you know that while you were in Japan, did you come to know that the Japanese Government did not recognize foreign citizenship of its own nationals?

Mr. Sakahara: I think the interpreter is having difficulty with that question.

(Testimony of George Takehara.)

The Interpreter: Would you repeat that [38] question, please.

Q. (Continuing): Did you know that the Japanese Government did not accept foreign citizenship for their nationals? In other words, any national of Japan was still a citizen of Japan to the Japanese Government.

The Interpreter: Any national?

Q. (Continuing): Of Japan, no matter where born as long as of Japanese blood.

The Interpreter: Yes, I understand.

A. Unless you are registered they treated you as a foreigner.

Q. Did he do anything to refuse to accept Japanese citizenship? A. No, I have not.

Q. Did anybody make any threats that they would do him bodily harm if he didn't vote in the elections? A. No.

Mr. Dovell: That is all.

Redirect Examination

By Mr. Shucklin:

Q. What language was spoken in your family until you went to school here in the United States when you were a young boy? [39]

A. Japanese. When I was talking to brother I was using English.

Q. How about his father and mother?

A. I was using Japanese,

Q. Why is it that you didn't register your birth

(Testimony of George Takehara.)

with the Japanese authorities yourself personally?

A. Well, since I thought I would be returning to the United States, I thought there was no use to register in Japan.

Q. Then you yourself did not register your name with the Japanese authorities but a relative did?

A. Yes.

Mr. Shucklin: You may examine, that is all.

Mr. Dovell: That is all.

The Court: How many more witnesses have you, counsel?

Mr. Shucklin: That is all, your Honor. We rest now.

The Court: You have nothing but documents?

Mr. Dovell: Just the documents, your Honor, of the Department, State Department. This record is certified by the Acting Secretary of State and signed by him and James E. Webb and by M. P. Chauvin, Authentication Officer in the Department of State. It contains application for passport February 27, 1950. It also [40] contains photostatic copies of Foreign Service Despatch re approval of certificate of identity for George Takehara and the affidavit to explain the protracted absence on Form 213, and in that connection it has the opinion of the Vice Consul taking the affidavit and five attachments which consist of affidavit of identity, supplement to 213, questionnaire and the questionnaire also has the English translation, certified statement from Japanese Government re voting and certificate of loss of nationality of the United States.

Mr. Shucklin: No objection.

The Court: Admitted.

Mr. Dovell: Please mark.

The Clerk: Defendant's Exhibits A-1 and A-2 are marked for identification and admitted in evidence.

(Defendant's Exhibits A-1 and A-2 marked for identification and admitted.)

DEFENDANT'S EXHIBIT A-1

United States of America

No. 4830

Department of State

To all to whom these presents shall come, Greeting:

I Certify That the documents hereunto annexed are true copies from the files of this Department.

In testimony whereof, I, James E. Webb, Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this seventeenth day of September, 1951.

[Seal] /s/ JAMES E. WEBB,
Acting Secretary of State.

By /s/ M. P. CHAUVIN,
Authentication Officer,
Department of State.

Defendant's Exhibit A-1—(Continued)

(Classification): Unclassified.

Foreign Service Despatch
For Dept. Use Only

Desp. No. 354.

Date June 26, 1951.

Priority: Air Pouch.

From: Kobe Branch, Uspolad, Kobe, Japan.

To: The Department of State, Washington.

Ref:

Subject: Approval of Certificate of Identity for
George Takehara.

Recd. Action Info.: 130-Takehara, George.

The passport application executed here by George Takehara on February 27, 1950, was disapproved by the Department on February 23, 1951. George Takehara applied at this office on June 21, 1951, for a Certificate of Identity under the provisions of Section 503 of the Nationality Act of 1940. A copy of his court complaint reads in part as follows:

“That the Vice Consul of the United States of America at Kobe, Japan, has refused to recognize the American citizenship claimed by plaintiff herein on the ground that the said plaintiff has expatriated himself under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, by ‘voting in the Japanese political election of April 5, 1947.’

Defendant's Exhibit A-1—(Continued)

“That plaintiff, George Takehara, admits that he did vote at the election in Japan as alleged by the American Vice Consul as set forth in paragraph VI but notwithstanding said section 401 (e) of Chapter IV of the Nationality Act of 1940 (8 U.S.C. 801) claims that he did not thereby become expatriated for the reason that at the time of the said voting in a technical sense Japan was not an independent country, but was then and now under the jurisdiction of the United States and at the time of said election subject to the direct command of General Douglas MacArthur of the United States Army, Supreme Commander for Allied Powers with full jurisdiction over Japan, and in addition the voting at the said election was done pursuant to order of the said MacArthur acting in such capacity.”

It is believed that his court complaint is made in good faith and has substantial basis.

Investigation by the Japanese Government concerning the conditions under which he voted revealed no evidence of coercion or duress in connection with his acts of voting. It was also ascertained that he had not submitted a claim to exemption from voting. The applicant's full statement regarding his voting and the Japanese Government's findings were sent to the Department with his application for a passport on August 18, 1950.

Investigation by appropriate military authorities

Defendant's Exhibit A-1—(Continued)
revealed that he voted as stated and that pertinent agencies and interviews of sources having knowledge of his wartime activities failed to reveal any information which might further reflect upon his citizenship status.

Action Copy—Department of State.

The action office must return this permanent record copy to DC/R files with an endorsement of action taken.

[Stamped]: June 27, 1951.

[In Margin]: /s/ W. E. Duggan.

Pd.

130

REGISTRATION APPROVED

Date _____

Expires _____

Consul _____

Place _____

Application for Passport
Application for Registration
(Indicate plainly which is desired)
(FORM FOR NATIVE CITIZEN)

PASSPORT ISSUED

Date _____

No. _____

Expires _____

Consul _____

Place _____

I, George Parada, a NATIVE citizen of the United States, solemnly swear that I was born at Washington (City or town) D.C. (State or country) on Dec 1 (Date) 1905; that I am now residing at 1100-1, Third St., S.W., Washington, D.C. (Give present address in full) (City and State) that I resided continuously in the United States from 1905 to 1935 at _____ (City and State) and that I have resided outside the United States as follows:

(State name of, and period of residence in, each foreign country)

_____ from 1900 to _____, present _____ (Name of country) from _____ to _____

My legal residence is at Box 151, Tacoma, Washington as soon as my status is cleared _____ (Name of country) _____ (State or country)

and I intend to return to the United States to reside permanently, within _____ (months) _____ (years).

I was never married last married on July 7, 1925 to MIRKO PARADA who was born at San Francisco, California on Dec 2, 1906; who is not an American citizen, and who is now residing at Tacoma, Washington

My father, ANTHONY PARADA, was born at San Francisco, California on _____ and is now residing at Box 151, Tacoma, Washington

My mother, JOSEPHINA, was born at San Francisco, California on Dec 1, 1905 and is now residing at _____

(IF EITHER PARENT WAS BORN OUTSIDE THE UNITED STATES, FILL IN THIS PORTION)

My father emigrated to the United States on or about 1900 I _____ resided continuously in the United States from 1900 to 1935 at _____ and was naturalized as a citizen of the United States before the _____ Court of _____ at _____ on _____ (Month) _____ (Day) _____ (Year)

My mother emigrated to the United States on or about _____ I _____ resided continuously in the United States from _____ to _____ at _____ and was naturalized as a citizen of the United States before the _____ Court of _____ at _____ on _____ (Month) _____ (Day) _____ (Year)

I request the inclusion of my wife _____ She acquired citizenship through _____ (Name in full)

I request the inclusion of my minor children as follows:

_____ born at _____ on _____ (Name in full) (Place and State or country) (Date)

_____ born at _____ on _____

_____ born at _____ on _____

I have have not been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered, or served in, the armed forces of a foreign state; accepted, or performed the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state; been convicted by court martial of deserting the military or naval service of the United States in time of war, or of committing any act of treason against or of attempting by force to overthrow, or of bearing arms against the United States.

If any of the above mentioned acts or conditions are applicable to the applicant's case, a supplementary statement under oath should be attached and made a part hereof.

*A woman applicant who has been married more than once should give name and place of birth of each husband, date of each marriage, and date of termination of previous marriage(s) through death or divorce. This and any other information necessary to clarify the citizenship status of the applicant should be set forth in a separate affidavit which will be considered a part of this application.

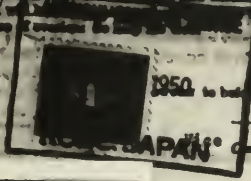
Vertical stamp: RECEIVED (Middle name)



I solemnly swear that the statements made on this form are true, and that the photograph attached is a true and correct likeness of me.

OATH OF ALLEGIANCE

That I am naturally born a citizen of the United States and defend the Constitution of the United States against all enemies, foreign and domestic; that I will support the laws of the United States and that I take this obligation freely, without any mental reservation or purpose to evade the same.



George Takehara
(Signature in full of applicant)

to take me this 9th day of February 1950
John W. Burnett
Consul of the United States at Kobe, Japan

Fee for passport, \$8.00.
Fee for administering oath and preparing passport application, \$1.00.
No fee for registration.

collected as per the fee prescribed.



DESCRIPTION OF APPLICANT
Height: 5 feet 4 inches.
Hair: Black Eyes: Brown
Distinguishing marks or features: None

Place of birth: Firwood, Washington
Date of birth: March 13, 1926
Occupation: None

EVIDENCE OF CITIZENSHIP AND IDENTIFYING DOCUMENTS
Passport No. 635093 issued on Sept. 13, 1928
by Sept. of State
{ to applicant, x x x } SUBMITTED.
(State name and relationship)

State disposition of passport: Taken up and cancelled at this office.

Other evidence of citizenship and identifying documents submitted, as specified below: (Indicate whether sent to the Department, retained or returned.)
Birth date: Oct. 2, 1939 presented and returned.

In file of office, or returned to applicant) Cert. of Birth dated Oct. 2, 1939 presented and returned.
Aff. of Identity executed in the US sent to Dept. of Identity issued by local police filed here.
Countries to be visited: _____

Part of departure: _____ Purpose of visit: _____
Name of ship: For return to US Date of departure: _____
Is the ship of an American line? Yes ("Yes" or "No")

REFERENCES

(Name) _____ (Address) _____

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the affidavit herewith and set forth to be the person he represents himself to be, and that he is a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for _____ years.

(Signature of witness) _____
(Business address of witness) _____

[SEAL]

Subscribed and sworn to before me this _____ day of _____, 19____

If no American citizen is available, an alien known to the consular may execute the affidavit.

Consul of the United States of America at _____

The applicant requests that the following person be notified in the event of his death or disability:
Mr. Yutaro Takehara, at. 12 Box 454, Tacoma, Washington (father)

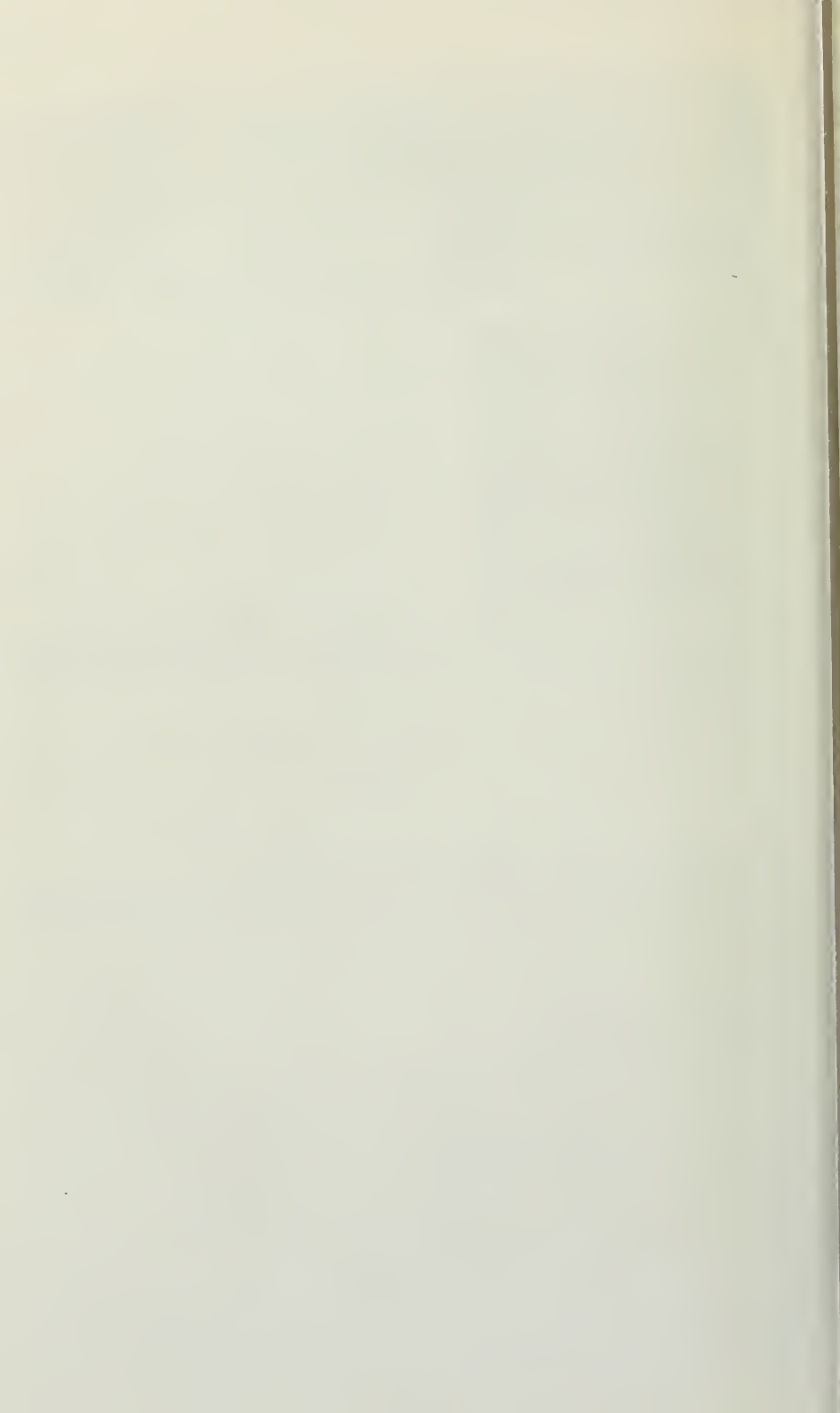
Additional data: Location of real and personal property, nature and place of investments, location of will, et cetera. (It is entirely optional with the applicant to give this information.)

Registration (approved) by the Department of State on _____
Certificate of Identity and Registration issued to the applicant on _____ (Date)

(Signature of consular officer)

REMARKS

The Department will ensure that the consular officer forwarding the application to the Department for registration is the same person who is the applicant's father, unless a written notice to the contrary is received.



Defendant's Exhibit A-1—(Continued)

Supplement to Form 213 or 213a

(This Form Must Be Filled Out Completely
and Presented at the Time of Appointment.)

1. Last name: Takehara; First name: George;
Middle name: None.

2. Honseki: 1103-1 Tannowa-mura, Sennan-gun,
Osaka-fu.

3. Height: 5' 4"; Weight: 125 lbs.; Color of
eyes: Brown; Color of hair, Black.

4. Date of birth: March 13, 1926; Place of
birth, Firwood, Washington.

5. Date of last entry into Japan: Nov., 1935.

6. Places of residence since January, 1941, in-
cluding present address. (Give complete addresses.)

1103-1 Tannowa-mura, Sennan-gun, Osaka-
fu. Jan., 1941, to present.

7. Complete record of all activities since reach-
ing the age of 18; this need not include activities
in the United States. Give complete names and ad-
dresses, and inclusive dates, for all schools, places
where employed, and other activities, whether full
or part-time. In the case of employment, give also
the name of your position. If this employment oc-
curred during the war, give the name and address
of your foreman or co-worker. If you were unem-
ployed at any time, so indicate. Additional sheets
may be used if necessary.

Full name and address of employer or school:

1103-1 Tannowa-mura, Sennan-gun, Osaka-fu.
Mar., 1944, to present.

Position: Working on the farm.



8. I (~~have~~) (have never) been employed under a foreign government or political subdivision thereof; if so employed I give below the full and exact details of the position held, and I present evidence to show whether having the nationality of such country was a requirement for the position I held.

私ハ外国政府ニ又ハソノ政治的分課ニ勤務シタガ(有リセシ) 有ル場合ハ一私ノ下記ノ通り私ノ執シタ職務ニ就イテ詳細ヲ記述シ且ツ私ハ其ノ國ノ国籍ヲ持テマスガ其ノ上ニ職務トハ何等ノ關係ヲ有ラズ証スル書類ヲ茲ニ提出シ改メマス。

x x x

9. I (do) (~~do not~~) possess Japanese nationality: the following are all the pertinent facts relating to my possession of Japanese nationality:

私ハ日本ノ国籍ヲ持テ居マス(有リセシ) 次ノ余白ニ國籍ニ關スル事項ヲ詳細ニ記入スルコト。

I was born on March 13, 1926. I applied for my Japanese nationality on Jan. 12, 1943 and the permission was granted on March 10, 1943. I was then 16 years of 10 months old.

10. I (~~have~~) (have never) served in the Japanese armed forces, as evidence of which I present the following documents.

私ニ茲ニ提出スル証據書類ノ通り日本軍隊ニ服シタガ(有リセシ) (有ラズ)

I submit a certificate to that effect from Mr. Hiroshi Mizobata, Tannawa-ura village head.

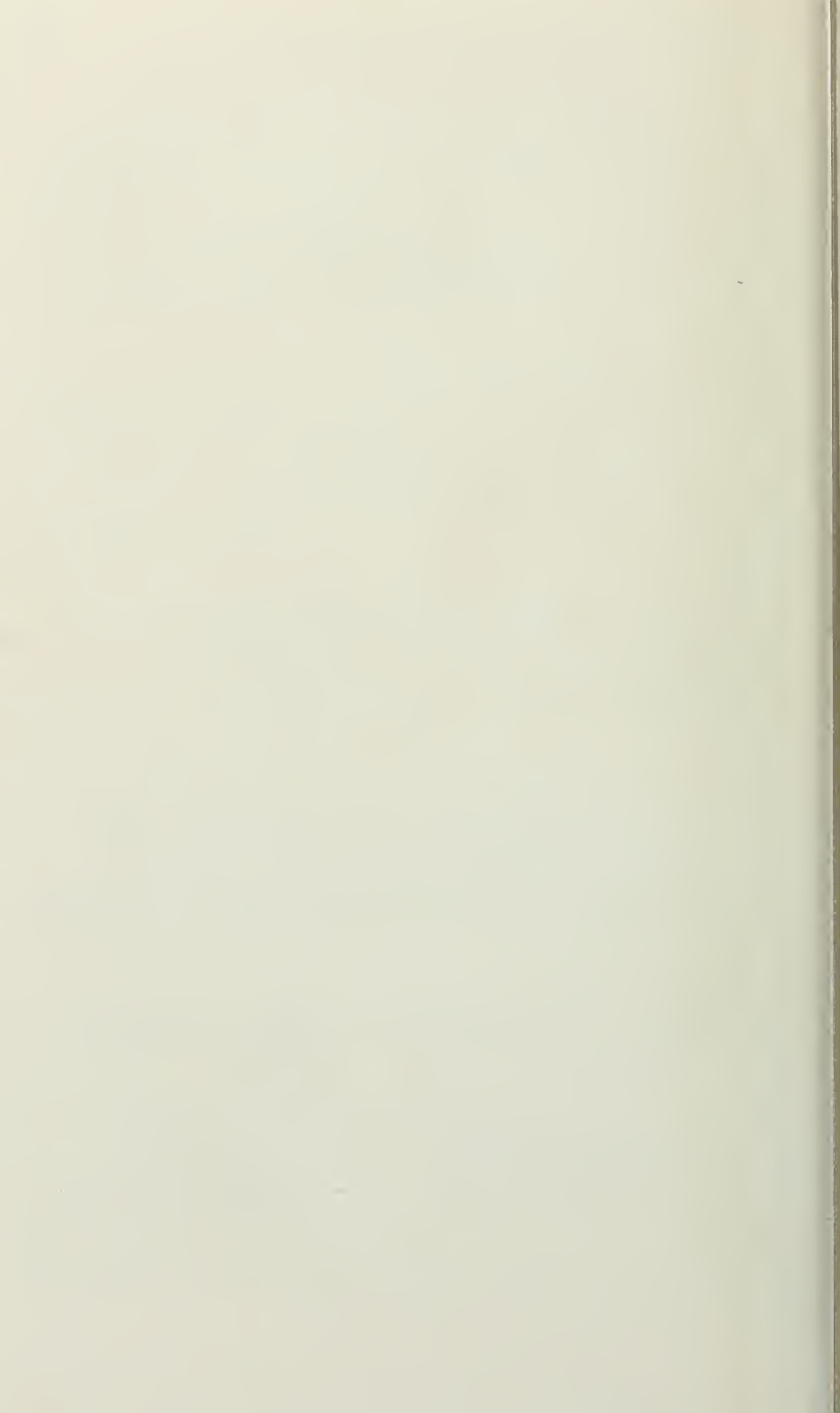
11. I (have) (~~have not~~) voted in a political election in Japan.

私ハ日本ニ於テ政治上ニ選挙ニ投票シタガ(有リマス) (有ラズ)

I voted in 1946. I did not vote in 1947, 1948, 1949, and 1950. I submit a voting certificate for 1946 from Mr. Miyomatsu Takeuchi, Tannawa-ura Election Control Committee official. I will submit a proper non-voting certificate since 1947 to present from local Election Control Committee official.

12. Give the names and addresses of five people in Japan, preferably employers or relatives, who know you well and can testify to your character and activities.

Full name	Full address
Mr. Yukioji Takahara (grandfather)	112-1, ...-ura, ...-s, ...-fu
Mr. Seiichi Achiyama (uncle)	112-1, ...-ura, ...-s, ...-fu
Mrs. Fumiko Achiyama (aunt)	...
Mrs. Yoshiye Matsuda (aunt)	...
Mr. Takaki Achiyama (uncle)	...



Defendant's Exhibit A-1—(Continued)

Form 213 or 213a (cont'd).

13. Remarks. (Use this space for additional information relating to item 1-12, or for other pertinent information, including address or person through which applicant can always be reached.)

I solemnly swear that the foregoing answers are voluntarily made and are true, correct, and complete to the best of my knowledge and belief.

/s/ GEORGE TAKEHARA.

(Signature of Applicant.)

Subscribed and sworn to before me this 27th day of February, 1950.

[Seal] /s/ JOHN W. BURNETT,
American Vice Consul.

(Original)

Form No. 213

Foreign Service

(Corrected June, 1945)

Affidavit by Native American to Explain
Protracted Foreign Residence

Affidavit by Naturalized American to Explain
Protracted Foreign Residence

This form should be used by any native or naturalized American citizen who has resided abroad for two years or more.

The form must be used by a naturalized citizen

Defendant's Exhibit A-1—(Continued)

who has resided for two years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated. It must also be used by a naturalized citizen who has resided continuously for five years in any other foreign state. In cases of naturalized citizens the exact periods and places of foreign residence since naturalization should be stated.

The form must always accompany applications for extension of passports which have been expressly limited in validity.

I, George Takehara, a native American citizen, born at Firwood, Washington, do solemnly swear that I ceased to reside in the United States on or about Oct., 1935; that I have since resided at Japan; and that I arrived in Japan, where I am now temporarily residing on Nov., 1935, my reasons for such foreign residence being as follows:¹ I was an infant when I accompanied my brother to Japan. I was a student here until Feb., 1944. Since graduation, I have been working on the farm. I now wish to be repatriated to my parents in the U. S.

I have (See Supp.) obtained naturalization in a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces

¹Executing officer will indicate whether the above is the affiant's independent statement. If not, officer should state extent to which he has prompted affiant and reasons therefor. Officer should also state whether or not affiant's statement has been translated from a foreign language.

Defendant's Exhibit A-1—(Continued)

of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state; been convicted by court martial of deserting the military or naval service of the United States in time of war; been convicted by court martial or a court of competent jurisdiction of the commission of any act of treason against; or of attempting by force to overthrow, or of bearing arms against, the United States.²

I maintain the following ties of family, business, and property with the United States: Parents, 2 brothers, and 1 sister in the U. S.

I do not pay the American Income Tax.

I intend to return to the United States permanently to reside within as soon as my status is cleared.

/s/ GEORGE TAKEHARA.

(Signature of Applicant.)

(Address): 1103-1 Tannowa-mura, Sennan-gun,
Osaka-fu.

²If any of these acts or conditions have been performed or fulfilled the affiant should set forth the facts fully in a supplementary statement which should be affixed to and made a part of this affidavit.

Defendant's Exhibit A-1—(Continued)

American Consular Service at Kobe, Japan.

Sworn to before me this 27th day of February, 1950.

[Seal] /s/ JOHN W. BURNETT,
Vice Consul of the United
States of America.

Instructions.—As many copies of this form should be made out as of the application for registration or for passport which it accompanies, and should be firmly attached thereto.

August 11, 1950.

The applicant speaks no English. The interview was conducted and the oath administered in Japanese. On the reverse is a summary of replies to questions asked in order to obtain the necessary information. The facts and circumstances regarding the applicant's foreign residence as stated are believed to be correct and to constitute the true reason for such residence.

Identity was established by photograph under seal on affidavit of identity executed in the United States and verified by certificate of identity issued by the local police. Citizenship claim was established by expired passport.

He reacquired Japanese nationality on application made on January 12, 1943, and permission granted on March 10, 1943. His claim to American citizenship was not affected thereby because he was then a minor.

Defendant's Exhibit A-1—(Continued)

He stated under oath on February 27, 1950, that he had voted in a Japanese political election of 1946. The attached certified statement from the Japanese Government gives the dates of his voting as April 5, 20, 25, and 30, 1947. It is believed that the Japanese Government statement is correct.

It is my opinion, based on interview, documents presented, investigation by appropriate military authorities, and certified statement from the Japanese Government, that he has lost all claim to United States citizenship by voting in the Japanese political election of April 5, 1947 (Section 401 (e), Nationality Act, 1940). A Certificate of the Loss of the Nationality of the United States accompanies this application.

/s/ D. J. MELOY,
American Vice Consul.

Attachments:

1. Affidavit of Identity.
2. Supplement to 213.
3. Questionnaire (2).
4. Certified statement from Japanese Government re voting (2).
5. Certificate of Loss of Nationality of U. S. (3).

DJM/tk

Opinion of Officer Taking Affidavit

The officer before whom the affidavit is made should see that the pertinent facts and circumstances regarding the applicant's residence abroad

Defendant's Exhibit A-1—(Continued)
are fully and correctly set forth in the affidavit and application. If, for any reason, they are not so stated, the officer should complete them in the space below, adding such comment or opinion as is appropriate. He should state whether the facts recited constitute the true reason for such residence. He should also state his opinion, in each case, whether the applicant has abandoned his allegiance and ties with the United States and so shaped his plans as to render it improbable that he will return to the United States to reside and perform the duties of a citizen and whether he has lost his American citizenship under any of the provisions of the Nationality Act of 1940. He should sign his name and add his title below the statement of his opinion.

Japanese Government
Ministry of Foreign Affairs
Liaison Bureau

To: General Headquarters, Supreme Commander
for the Allied Powers.

From: Ministry of Foreign Affairs.

Subject: Information Concerning Voting History
of George Takehara.

Fom No. 929 (LCR).

12 May, 1950.

1. Reference: Check Sheet of Diplomatic Section (Kobe Division), 1 March, 1950, subject: Request for Information from Japanese Government Concerning George Takehara.

Defendant's Exhibit A-1—(Continued)

2. The Ministry of Foreign Affairs has received a statement from the National Election Administration Commission on the subject matter to the following effect:

a. The dates, places and related laws of the elections in which he voted:

(1) Elections of Governor and Mayor.

Date: April 5, 1947.

Place: Zenshoji Temple, Tannowa-mura, Sennan-gun, Osaka-fu.

Related Laws: Law Concerning the Organization of Prefectures (Law No. 64, March 16, 1899).

Article 3-3. The inhabitants of the city, town and village in a prefecture shall be eligible to vote at the election of the prefecture in accordance with the provisions of the present law.

Article 6. The person who is eligible to vote at the election of the members of the assembly of a city, town or village shall be eligible to vote at the election of the members of the prefectural assembly.

Article 74-2. The person who is eligible to vote at the election of the members of the prefectural assembly shall be eligible to vote at the election for the governor.

Law Concerning the Organization of Towns and Villages (Law No. 69, April 7, 1911):

Defendant's Exhibit A-1—(Continued)

Article 7. Any inhabitant of a town or village who is a citizen of Japan shall, in pursuance of the present law, have the right of voting at its elections.

Article 12. Any citizen of a town or village who, being twenty years of age or upward, has been inhabitant of the town or village for six consecutive months at a given date shall have the right to vote at the election of assemblymen of the town or village. * * *

Article 61. * * * Any person who has the right to vote at the election for members of a town or village assembly shall have the right to vote at the election of the mayor * * *

(2) Election of Members of the House of Councillors.

Date: April 20, 1947.

Place: The same as quoted in (1) above.

Related Law: Law for the Election of Members of the House of Councillors (Law No. 11, February 24, 1947).

Article 3. Any person who has the right to vote at the election of Members of the House of Representatives shall have the same right at the election of Members of the House of Councillors.

Defendant's Exhibit A-1—(Continued)

- (3) Election of Members of the House of Representatives.

Date: April 25, 1947.

Place: The same as quoted in (1) above.

Related Law: Law for the Election of Members of the House of Representatives (Law No. 47, May 5, 1925.)

Article 5. Any Japanese national who is over twenty years of age shall be eligible to vote.

- (4) Election of Members of the Prefectural Assembly.

Date: April 30, 1947.

Place and related laws: The same as quoted in (1) above.

b. The elections in question are political elections.

c. There is no evidence of coercion or duress in connection with his acts of voting. It has been ascertained that he had not submitted a claim to exemption from voting.

For the Minister:

/s/ T. YOSHIOKA,

Chief of Liaison Section, Liaison Bureau, Ministry of Foreign Affairs.

The Japanese official(s), whose signature(s) appear(s) on the above documents, was, on the date of signing, qualified to sign such documents and

Defendant's Exhibit A-1—(Continued)

had the authority to do so in his official capacity, as shown.

[Seal] /s/ DAVID S. TAIT,
Lt. Col., GSC., Chief,
Japanese Liaison Section.

15 May a.m. 1950.

[Stamped]: American Consular Service, May 18, 1950, Kobe, Japan.

I, John W. Burnett, Vice Consul of the United States of America in and for Kobe, Japan, duly commissioned and qualified, do hereby certify that T. Yoshioka, whose signature is subscribed to the annexed instrument was on the 12th day of May, 1950, the day of the signing thereof, Chief of Liaison Section, Liaison Bureau, Ministry of Foreign Affairs, Japanese Government, to whose official acts faith and credit are due.

[Seal] /s/ JOHN W. BURNETT,
Vice Consul of the United States of America in and
for Kobe, Japan.

Service No. 3636.

AFFIDAVIT OF IDENTITY

AMERICAN CONSULAR SERVICE

FEB 27 1950

KOBE JAPAN

UNITED STATES OF AMERICA)
 STATE OF WASHINGTON)
 COUNTY OF KING) SS
 CITY OF SEATTLE)

I, FRANK MISAO OSAKA, being first duly sworn, depose and say:

That I am a citizen of the United States of America by reason of birth at Puyallup, Washington, on January 2, 1924.

That I reside at Route 2, Box 161, Tacoma, Washington.

That the photograph which is attached below under notarial seal is a photograph of GEORGE TAKEHARA, whom I have known personally for many years. The photograph bears an unmistakable likeness to him. That I was a neighbor and his playmate until his departure to Japan, in or about October, 1934. That since then, we have kept in close contact by exchange of letters and pictures.

That GEORGE TAKEHARA was born on March 13, 1926 in Firwood, Pierce County, Washington, and is a citizen of the United States. To the best of my knowledge and belief he has never performed any act which causes loss of American citizenship.

He is making application to the American Consul in Japan to establish his claim to the American citizenship, and I now make this affidavit for the purpose of establishing his identity.

Frank Misao Osaka

Subscribed and sworn to before me
 this 2nd day of January, 1950.

Handley in and
 Notary Public in and for the State
 of Washington, residing at Seattle.





tk

Original

ORIGINAL CONTROL

Form No. 10
PASSPORT SERVICE
Revised April 1944

CERTIFICATE OF THE LOSS OF THE NATIONALITY OF THE UNITED STATES

(This form has been prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940 (54 Stat. 1102))

DEPARTMENT OF STATE
 OFFICE OF THE SECRETARY OF STATE
 (S.A.S.)
 23.1.1947
 CERTIFICATE
 ANNEXED
 For the
 Secretary of State
 R. B. Shipley
 Chief, Passport Division
 C. J. Baker

Consular Service of the United States
 America at Kobe Japan

130-TAKEHARA GEORGE

I, D. J. Meloy, hereby certify that, to the best of my knowledge and belief,

George TAKEHARA was born at Firwood (Town or city) (Previous or county)

Washington, on March 13, 1926 (State or country) (Date)

That he resides at 1103-1, Tannosura, Sennan-gun, Osaka-fu, Japan (Street) (City) (State)

That he last resided in the United States at Route 12, Box 697, Tacoma (Street) (City) (State)

Washington (State)

That he left the United States on October 28, 1935 (Precise date should be given)

That he acquired the nationality of the United States by virtue of birth in the United States (If a national by birth)

in the United States, so state: if naturalized, give the name and place of the court in the United States before which naturalization was granted and the date of such naturalization

That he has expatriated himself under the provisions of Section 401 (e) of Chapter IV of the Nationality Act of 1940 by voting in the Japanese political election of April 5, 1947 (The action causing

expatriation should be set forth succinctly)

That the evidence of such action consists of the following: His sworn statements on Supplement to 213 and Questionnaire both dated February 27, 1950; certified statement from the Japanese Government regarding his voting record (Here list the sources of information and such documentary evidence as may be available concerning the action causing expatriation of the individual concerned)

In testimony whereof, I have hereunto subscribed my name and affixed my office seal this 11th day of August, 1950 (Month)

[SEAL]

D. J. Meloy (Signature)

D. J. Meloy Vice Consul of the United States of America (Title of officer)

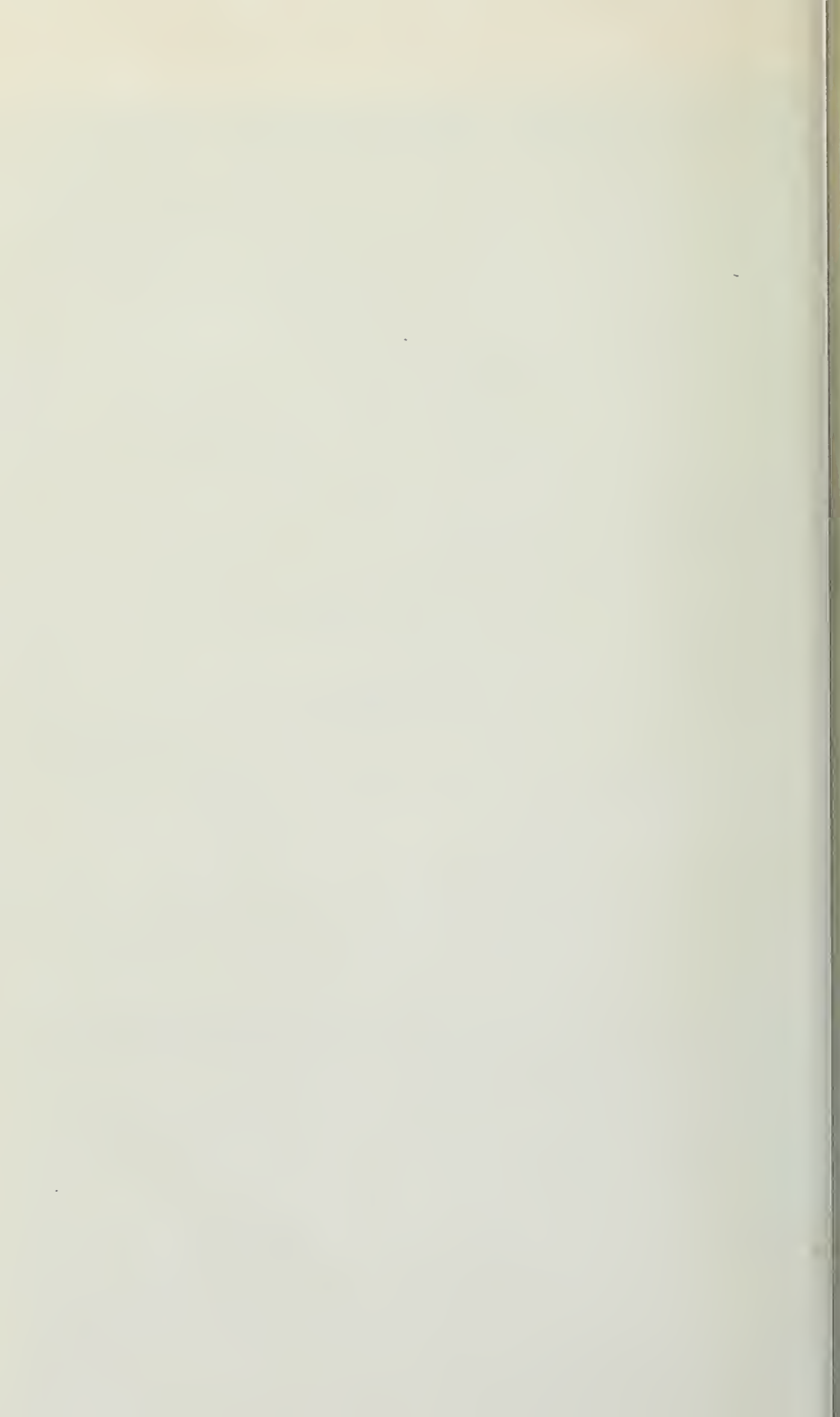
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1219

16-41100-1

ISM

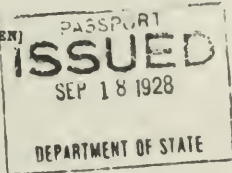
NO 200 1.000.1000



The Department of State will open this application as promptly as possible after its receipt. Inquiry concerning the issue of a passport to you and would necessarily retard the issue of passports to other persons. An application for a passport must be attached to it a copy of the applicant's photograph. A loose signed photograph of the applicant must accompany the application. The photographs must be on thin paper, should have a light background, and be not over three inches in size.

The legal fee for a passport is also dollars, in currency or postal money order, and one dollar for extension of application.

(FORM FOR NATIVE CITIZEN)



UNITED STATES OF AMERICA

STATE OF Washington COUNTY OF Pierce

I, George Takahara, a NATIVE CITIZEN OF THE UNITED STATES, hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at

Washington, on Mar. 18, 1906; that I was married on

that my (father) Yutaro Takehara was born at Osaka-fu, Japan and is now residing at R. F. D. 1 Box 455 A, Puyallup, Washington

The portion in this block need not be filled in by a married woman or a person whose father was born in the United States

My father emigrated to the United States on or about Sept. 1907 in the United States from 1907 to 1908, at Seattle, Washington and was naturalized as a citizen of the United States before the

I have resided outside of the United States at the following places for the following periods:

from to from to

and that I am domiciled in the United States, my permanent residence being at

in the city of Puyallup, State of Washington

My last passport was obtained from on and was

I am about to go abroad temporarily and intend to return to the United States within one (months) with the purpose of residing and performing the duties of citizenship therein.

I desire a passport for use in visiting the countries hereinafter named for the following purpose:

Japan

I request that my passport include my wife

at on and to whom I was married on

My wife was naturalized as a citizen of the United States before the

as shown by the accompanying Certificate of Naturalization. Since naturalization she has resided abroad at the following places for the following periods.

from to from to

I request that my passport include my minor children as follows:

born at on born at on born at on

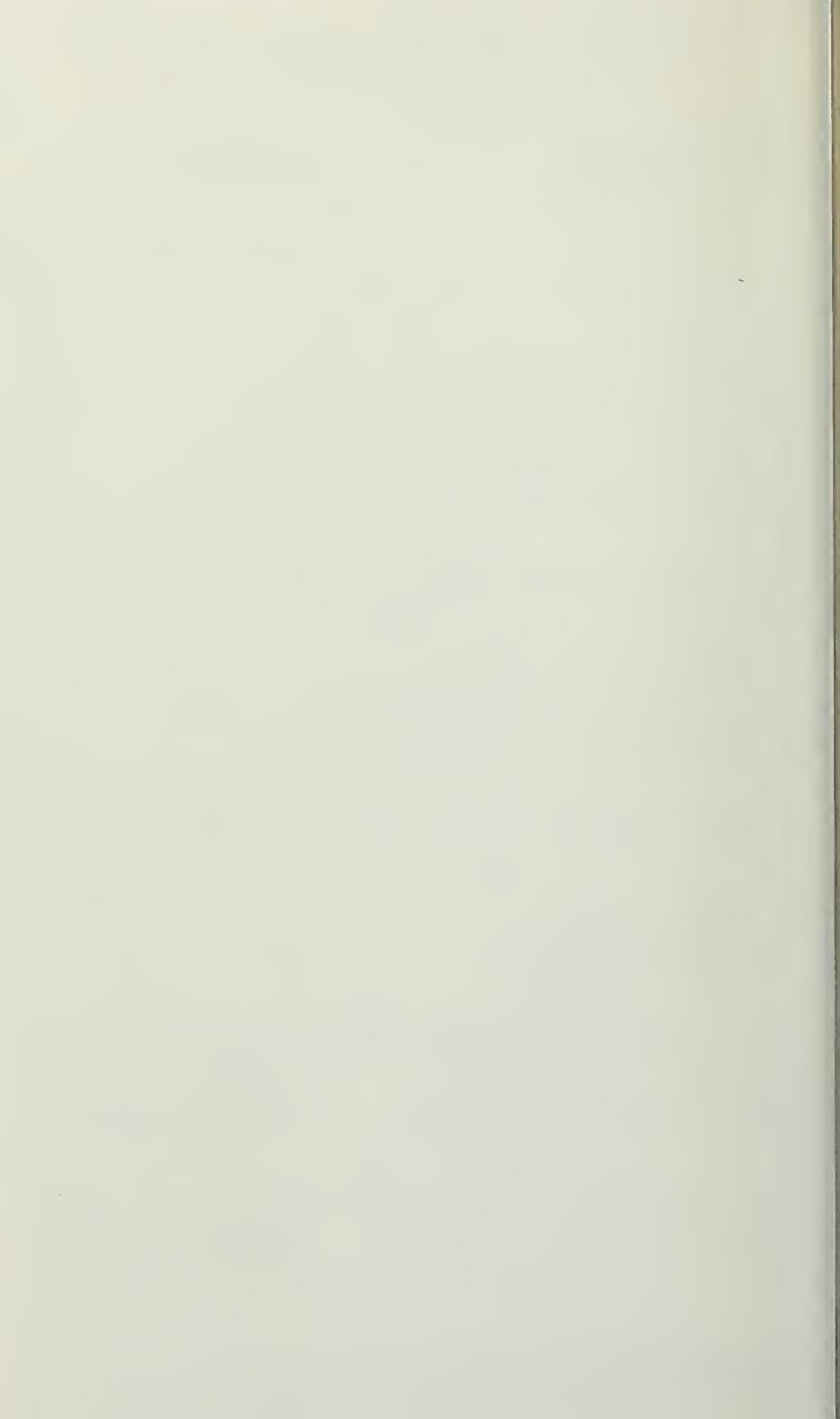
A person born in the United States should submit a birth or baptismal certificate with his application, or if the birth was not recorded, affidavits from the attending physician, parents, or other person having sufficient knowledge to be able to testify to the date and place of the applicant's birth.

BIRTH CERTIFICATE SEEN 11-7-28

(To be printed by applicant for passport) (Print name) (Print initials)

RECEIVED SEP 17 1928

29956



OATH OF ALLEGIANCE

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Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God.

George Takekura
(Signature of applicant)

Sworn to before me this 12th day

Gather yutaru Takekura

(SEAL OF COURT)

of Sept. 1928
August L. Rowley

Clerk of the Agent Court of State

DESCRIPTION OF APPLICANT

Height: feet, inches. Age: years.
Hair: Eyes: Black
Distinguishing marks or features
Place of birth Date of birth MAR 14 1906
(City and State) (Month, day, and year)
Occupation

I intend to leave the United States from the port of Seattle, Washington
(Port of departure)
sailing on board the President Nierce on Oct. 9, 1928, 1928
(Name of ship) (Date of departure)

ADDRESS

I request that my passport be mailed to the following address:

Name: George Takekura
No. and Street: A. P. O. 1, Box 455 A,
City and State: Everallup, Washington

(Note: A passport will not be mailed to an hotel address unless the hotel is the applicant's place of permanent abode.)

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the affidavit herein before set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for Life years.

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

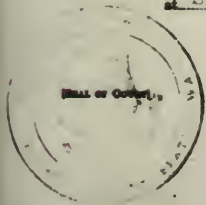
Ayako Takata
(Name of witness)
1708 5th St. S. Seattle
(Address of witness)

Sworn to before me this 12 day
of Sept. 1928
August L. Rowley
Clerk of the Court



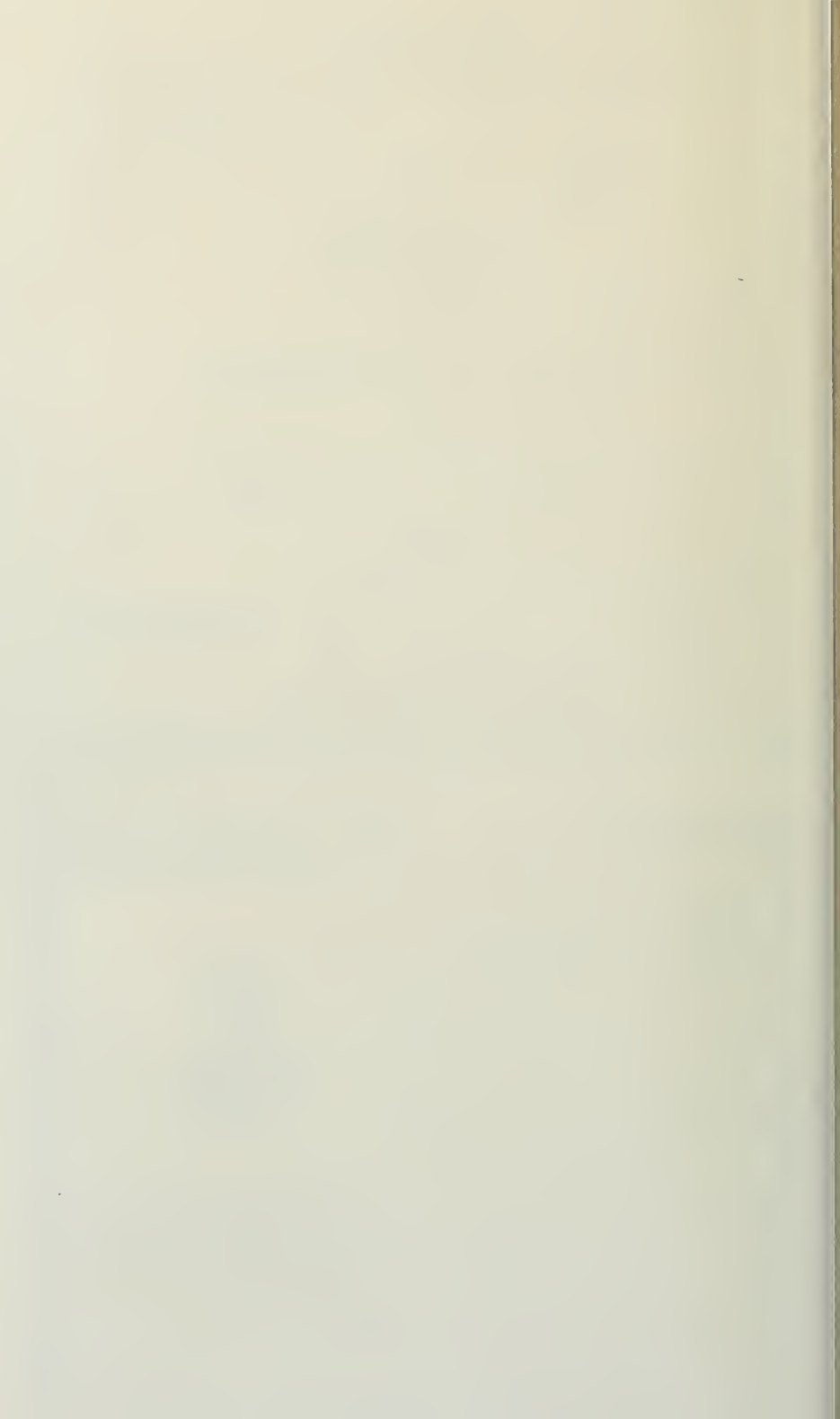
George Takekura

A must be sent to the Department with the application, to be affixed to the passport with an impression of the Department's seal.



Admitted in evidence December 20, 1951.

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DEFENDANT'S EXHIBIT A-2

Questionnaire

This form should be executed in triplicate by any person who claims that he is or was a native or naturalized national of the United States from whom any officer of the Foreign Service desires to obtain information additional to that contained in an application for a passport or in any other form used in connection with the determination of the nationality status of such person.

1. During your foreign residence, have you prior to this visit appeared at an American consular office for the purpose of applying for a passport or to be registered as a national of the United States, or for any other purpose?

(Yes or no): Yes.

If so, give date of each appearance, place of such office and purpose of appearance.

About September, 1949, American Consular Service at Kobe, to request appointment for passport application.

2. If you were accompanied by anyone during any such appearance, give name, relationship, and address of each such person and place and date of appearance.

None.

3. Are you known or considered in your community to be a national of Japan?

(Yes or no): Yes.

4. Have you ever been registered as a national of Japan or any other foreign country, or obtained

Defendant's Exhibit A-2—(Continued)

a passport, certificate, card or other document therefrom in which you were described as a national of a country other than the United States?

(Yes or no): Yes.

If so, give date and place of registration and/or date and place of issue and description of any such document and a statement of circumstances under which you were registered or obtained any such document.

I applied for my Japanese nationality on Jan. 12, 1943, and the permission was granted on Mar. 10, 1943. I established my own Family Register on May 25, 1943.

5. Have you ever informed any local or national official of Japan or any other foreign state that you are a national of the United States?

(Yes or no): Yes.

If so, give name and address of such official and date when he was so informed.

Prior to my reacquisition of Japanese nationality, I informed to an official of the Ozaki Police Station. (Name and address unknown.)

6. Have you ever been a member of any Japanese or other foreign political party, organization, association, faction or group?

(Yes or no): No.

If so, give details of joining each, address of headquarters, period of membership and purpose of becoming a member.

.....

Defendant's Exhibit A-2—(Continued)

A. Military Service

1. Have you ever entered or served in the armed forces of Japan or any other foreign state?

(Yes or no): No.

* * *

B. Employment by a Foreign Government

1. Have you ever accepted or performed the duties of any office, post or employment under the government of Japan or any other foreign state or political subdivision thereof?

(Yes or no): No.

If so, give place and period of employment, title of position held by you, and name of your superior officer.

.....

* * *

C. Voting in a Foreign Country

1. Have you ever voted in a political election in Japan or any other foreign state or participated in an election or plebiscite to determine sovereignty over foreign territory?

(Yes or no): Yes.

If so, give date and place of voting and nature of each such election or plebiscite.

April 10, 1946, Zenshoji Temple, Tannowamura, Sennan-gun, Osaka-fu, to elect Member of the House of Representatives.

2. Prior to voting, did you make a claim to

Defendant's Exhibit A-2—(Continued)

citizenship of the United States to any local or national official?

(Yes or no): No.

3. Did you request exemption from voting?

(Yes or no): No.

If so, give name and address of each official to whom you made request to be exempted.

.....

4. Were you urged, advised, or coerced to vote by any official or other person?

(Yes or no): No.

If so, state name and address of each such official or person and give detailed statement of the circumstances surrounding such urging, advising, or coercing.

* * *

6. In connection with voting, did you ever consult an American foreign service officer concerning an effort to influence you to vote?

(Yes or no): No.

If so, give date, name and address of such officer.

.....

7. Give detailed statement of your reason for voting.

Overhearing rumors that non-participants were to be punished caused me to vote and I did not know that one loses his American citizenship by voting.

I solemnly swear that the foregoing answers,

Defendant's Exhibit A-2—(Continued)
statements and explanations are true to the best of
my knowledge and belief.

/s/ GEORGE TAKEHARA.

(Signature of Applicant.)

Subscribed and sworn to before me this 27th day
of Feb., 1950.

/s/ JOHN W. BURNETT,

Vice Consul of the United States of America at
Kobe, Japan.

Japan,

City of Kobe,

American Consular Service—ss.

Before me, John W. Burnett, Vice Consul of the
United States of America in and for Kobe, Japan,
duly commissioned and qualified, personally ap-
peared Hideo Konishi, known to me to be familiar
with the English and Japanese languages, who,
being duly sworn, deposes and says that the an-
nexed translation is a true translation into English
of the attached completed questionnaire in Jap-
anese, and further deponent saith not.

/s/ HIDEO KONISHI.

Subscribed and sworn to before me this 27th day
of February, 1950.

[Seal] /s/ JOHN W. BURNETT,

Vice Consul of the United
States of America.

Service No. 927.

Admitted in evidence December 20, 1951.

Mr. Dovell: There are some questions and answers, your Honor, in this exhibit and counsel would like to have them read. I haven't any objection. I will proceed to read them if the [41] Court so directs.

The Court: What do you want them read for?

Mr. Shucklin: I think unless—I mean either your Honor will read them at your leisure or we will read them orally if you——

The Court: No, I don't to waste any time reading them. I can read.

Mr. Shucklin: Okay.

The Court: Have you anything more, counsel?

Mr. Dovell: No, your Honor, that is our case.

The Court: Any rebuttal?

Mr. Shucklin: No rebuttal, your Honor.

The Court: I think that this is an important question and I think it should be briefed. Counsel for the plaintiff has a brief.

Mr. Dovell: I will submit one, your Honor, if you so request.

The Court: Yes, all right. I not only request, I direct.

Mr. Dovell: Pardon me, I mean direct. How much time——

The Court: How much time do you want?

Mr. Dovell: Well, I would like to have—I am working on other briefs, but maybe I can get——

The Court: That's all right, I don't want to crowd you. [42]

Mr. Dovell: I'd like to have two weeks.

The Court: Yes, all right. I think I will give

you more time than that because I won't be back here until sometime——

Mr. Dovell: I will appreciate all the time you can give me.

The Court: ——sometime in January so I will be here on the 8th of January. I will give you until, let's see, that will be, well, I will give you to the 8th of January to file your brief and at that time I will fix more time for you, Mr. Shucklin, if you wish to reply to it.

Mr. Shucklin: Yes, your Honor.

The Court: And then I will take up the question of oral argument. I want to say to you that I notice in your brief, at least I didn't notice in your brief, that you had cited some of the pertinent authorities to my mind, and that is some of my own opinions and rulings of the Supreme Court in regard to them. For instance, the series of cases connected with *Minoru, United States vs. Minoru Yasui*, my opinion in the Federal Supplement, the review of that question by the Court of Appeals of the Ninth [43] Circuit and by the Supreme Court of the United States. You will find that in connection with the March cases, and then with my final opinion in the Federal Supplement where I reduce the sentence owing to the ruling of the Supreme Court. I think that probably the holdings in that case are not of great interest, but there is great interest in the discussions, particular discussions of the Japanese citizenship in those cases and the question of dual citizenship which is discussed. Likewise, in the case in *re Marjorie Reid* which I decided in the District Court of the District of Oregon and discussed the

question of the citizenship of a minor and the taking away of the citizenship by virtue of statutes where the person married and thereby, by virtue of the statute, lost citizenship. There are two other discussions which I have dealt with on the subject in a general way and I don't have those citations in mind, but there was an opinion that I rendered in the District of Columbia which related to the question of habeas corpus as to one of the war criminals, or two of the war criminals who were tried [44] by military commission in the Philippines and I was asked as sitting in the District Court of the District of Columbia, to grant habeas corpus. At that time I discussed a question of military occupation and the powers of an allied commander as an officer of the United States, but I did, in those two cases also, touch on the question of the powers of the occupation government. I note you have the Ninth Circuit Court of Appeals' opinion cited in that regarding occupation, so maybe that question is foreclosed, but those two cases are entitled in *re Yamamoto vs. Royall* and *Watanabe vs. Royall*. In as far as you find those pertinent, I should be pleased to have a discussion of the principles involved.

Mr. Dovell: Thank you, your Honor.

The Court: The Court is in recess until two o'clock.

(Whereupon, Court was recessed at 12:20 p.m.) [45]

TRANSCRIPT OF ORAL ARGUMENT

between counsel in the matter of George Takehara vs. Dean G. Acheson, Secretary of State, No. 1482, before the Honorable James Alger Fee, United States District Judge, at Tacoma, Washington, on the 24th day of January, 1952, at 10:25 a.m.

The Clerk: Cause No. 1482, George Takehara vs. Dean Acheson, Secretary of State, for hearing of oral argument, Toru Sakahara and Gerald Shucklin.

Mr. Shucklin: Ready, your Honor.

The Clerk: And Mr. Dovell for the Defendant. Counsel ready for argument?

Mr. Shucklin: Yes. May it please the Court, this case involves the citizenship of George Takehara of Japanese ancestry who was born right in this county on March 13, 1926, and, of course, is a citizen of the United States by virtue of the Fourteenth Amendment to the United States Constitution, and, as was brought out in the evidence, his family consists of his father, his mother, a brother, age 20, who is in the United States Army, a sister, age 13, attending school, and another brother, age 7, who also attends school, and the family resides at Fife on a farm just outside of Tacoma. [46] And another brother was a member of the family, but while a member of the United States Armed Forces, was killed in action in Europe. So we have a situation where the plaintiff's whole family, his brothers and sister, his mother and father, reside here. Like he, his brothers and sister are American citizens. The evidence shows that in 1935 when the plaintiff was

nine years old he and the brother who was killed in action were sent to Japan to be with their grandparents. In 1939 the brother returned to Tacoma. The father intended to bring the plaintiff back in a couple of years, but war intervened at this time and that desire could not be accomplished. George's schooling consisted of six years of primary school and three years in the middle school. During the war he went to an electrical school, but never became an electrician, and he continued to be a farmer. George was raised in the Japanese family tradition. During the war English was not taught in the schools in Japan. He was taught to obey his parents, his grandparents, government authority and believe that failure to obey [47] would be punished, and you will recall an example of his, he had a taste of Japanese authority when he was sent up for his draft examination and prior to his examination he was supposed to write down how tall he was and what his weight was. But when he was actually measured they found that he weighed, that there was a difference of ten centimeters in his weight from the information he had given them and what he actually measured, and for giving this incorrect information he was struck by one of the military officials. And then he had an unpleasant experience during one of the air raids when he was dressed in white, with the Japanese police. The evidence further showed that at no time did the plaintiff have any intention whatsoever to lose or give up his American citizenship. The father testified that he wanted his son to come right back home just as

soon as it was possible. That was after the war, and you will recall the testimony of George Takehara, that after the war he went to the office of the Japanese Governor of Osaka Province and was told that an American consulate would be established in Kobe [48] and that he should wait until that time to make his application. And then later on he did make an application for a travel document to come to the United States. Now the evidence further showed, and I think your Honor has judicial notice of the fact that after the war and before the elections under the control of General MacArthur, the Japanese people were told by newspaper, radio and political speeches that in order to build a new Japan and a democratic country, that everyone should vote, and this was reiterated over and over again according to the testimony of plaintiff. He testified that he felt it was an order that he must vote and he was advised that it was his duty to vote. And he was advised that if he didn't vote, that he would lose his ration card which meant, of course, nothing to eat. He explained that every year the heads of ten or so houses elected one to act as head of that particular neighborhood block and this head acts as sort of a liaison between the government and all the residents of this particular block. On election day the head of the block came to his [49] grandfather, this boy's grandfather, and stated in plaintiff's presence that everyone should go to the polls. School children came to his house and told the family to go to the polls.

The grandfather went to the polls first, came back and said the Japanese police officers and

American military police were at the polls and that if he did not vote he would get into trouble and lose his ration card. The plaintiff's uncle, Seiji Fujihara, said he was going to the polls and told the plaintiff to come with him to the polls, otherwise he would lose his ration card and receive other punishment. Now, the plaintiff did not know that he would lose his citizenship if he voted. He did not intend to lose his American citizenship according to his testimony, and from all of the testimony in the evidence here, it certainly wasn't his free, intelligent, voluntary choice, but was done under legal duress, and when the plaintiff learned that such voting would endanger his American citizenship, he voted no more. Now, there is one other statement in regard to the evidence. The father registered the plaintiff's birth [50] with the Japanese authorities but withdrew the registration in 1930. During the war a cousin, not George, but a cousin registered George's birth with the Japanese authorities. The plaintiff himself did not do this as the defendant, I think, mistakenly contended in his brief. His cousin registered his birth because the family in Japan considered it necessary in order to protect themselves against the consequences of having an enemy alien relative in their community. After the plaintiff was denied a travel document this action was instituted. During the war, the defendant, as an enemy alien, was required and did report to the police as an alien, and was not told, was told not to travel without a permit, and was told that he was prohibited from having a camera in his possession. Now, in addition to the

oral evidence adduced at this trial, there was a document introduced by the Government which involves a questionnaire given to the plaintiff, asking him, among other things, about his voting, and he was asked why he did vote. Now, he made that statement to the American consul in February of 1950. [51] He said that he heard that he would be punished if he did not vote. Do you have that exhibit here?

The Clerk: Yes.

Mr. Shucklin: Now, this is the English translation, your Honor, to question 7 and it appears to be the next to the last sheet in this exhibit. "Give detailed statement of your reason for voting." "Overhearing rumors that non-participants were to be punished caused me to vote and I did not know that one loses his American citizenship by voting." Now, as I see it, your Honor, if just one of these three things has been satisfied, the plaintiff's citizenship is not in jeopardy. First, if Japan was a foreign country, two things then are to be considered. First, whether or not the act was unconstitutional depriving him of his citizenship, or, secondly, was the voting done under duress. The next point is, if Japan was not a foreign country under a legal definition, then of course, the act of voting would not endanger his citizenship. However, as far as the Ninth Circuit is concerned, the case of *Acheson vs. Kuniyuki*, 189 F. (2d) 741, [52] reversed a lower court decision on that point and the present state of the law is according to that decision, that Japan was a foreign state within the meaning of Title 8, U. S. Code Annotated, Section

801, but in holding that the Court reviewed the decisions of the lower courts on the question of duress in voting and they said that, while in some of those cases it was held that Japan was a foreign, was not a foreign country, even if those cases were wrong on that point, they were correct on the point of legal duress as far as voting was concerned. Now those cases are set forth in our brief beginning on page 2 of our first brief. First case is Uyeno v. Acheson, 96 F. Supp. 510. The Court held that the act of an American-born Japanese minor in participating in the 1947 general election could not be held to have been such a deliberate choice of allegiance to another country as to have resulted in expatriation, where the constant reiteration of the importance of voting in such an election had been taken by minor as a command on part of General MacArthur and occupation forces which he could not, with [53] impunity, disobey and where he had been led to believe that if he did not vote he would lose his ration food card.

The Court: Who held that?

Mr. Shucklin: I will have to get 96 Federal Supplement.

Mr. Sakahara: Here it is.

Mr. Shucklin: The Uyeno case, the decision was by District Judge Yankwich and, as I recall in that case, he held that Japan was a foreign state but went on to the question of the election and said that there was a duress exercised on the plaintiff in this particular case.

The Court: How old was this boy when he voted?

Mr. Shucklin: In our case?

The Court: Yes.

Mr. Shucklin: In our case he was a month past twenty-one. In the *Tsunashima vs. Acheson*, 83 F. Supp. 473, the uncontradicted testimony disclosed that on election day plaintiff refused to vote several times and was finally informed by an officer of the city that unless she voted her food rations would be discontinued. The plaintiff said rather than [54] go without a ration book for herself and grandmother, she yielded and voted. The Court held the facts were clear that she voted under duress, coercion and intimidation which dominated her mind in that she could not fully and voluntarily act at the time she voted, and such voting was not the result of a free and intelligent choice.

The Court: It is a question of fact, isn't it?

Mr. Shucklin: Yes, it is a question of fact.

The Court: So the fact that some other Court held in some other circumstance that it was or was not duress certainly doesn't bind this Court.

Mr. Shucklin: Well, I think it is important for your Honor to be apprised of the decisions of other Courts on this question.

The Court: On a question of fact?

Mr. Shucklin: Yes, it is on a question of fact. Now in *Kuwahara vs. Acheson*, 96 F. Supp. 38, it was held in that case that the plaintiff voted because he thought he was required to vote and feared the result of disregarding the American occupation authorities' admonition and urging by press and

radio that all eligible voters participate in [55] elections. Thus such act was not voluntary, but impelled by the influence of those whom he recognized as exercising supreme power in Japan. I am not contending that every fact in our case is the same in these other cases. For instance, in our case we have this fact, we have the radio and the press asking and urging them to vote, but he never said in his testimony that he had any direct contact with the American authorities and the only contact he had that was with the American authorities was the fact that there were some American military police at the voting place, but the duress that was exercised on him, of course, was through the Japanese authorities and through his grandfather and uncle and the fact which seems to be a pretty general thing, that these people thought that if they didn't vote they were going to be punished.

The Court: Well, but the difficulty with the whole situation is that you are flying in the face of a congressional statute. I realize that if the statute is unconstitutional, that is a different matter.

Mr. Shucklin: No, I am not discussing the question [56] of unconstitutionality right now.

The Court: I know you are not discussing the question of unconstitutionality, but the statute says if he votes he loses his citizenship. That is flat.

Mr. Shucklin: Yes, but the exception is that if he voted under duress it was not the exercise of his free and intelligent choice.

The Court: Congress doesn't say that.

Mr. Shucklin: That is what the Courts say.

The Court: I know, but I am sitting in the same place as the rest of the Courts and I don't think that the Courts have any business in saying, when Congress passes a statute, if you vote you lose your citizenship, that they should write in a lot of exceptions. The statute is plain. It says flatly, if you vote that is it.

Mr. Shucklin: Yes, but the statute is plain that it has got to be voluntary voting.

The Court: Oh, is it?

Mr. Shucklin: Yes, I would say so.

The Court: What does it say, what is the language of the statute?

Mr. Shucklin: Just exactly what you said, [57] but certainly that is not the legal intendment according to all of these decisions.

The Court: As I say, I don't recognize the authority of any decision that you quoted.

Mr. Shucklin: I know that your Honor is deciding this case on the facts, but I disagree with you very heartily on the fact that you are bound by just the exact wording of that statute without determining whether or not this man actually voluntarily voted.

The Court: I don't know why you say that. Congress passes a statute, that is it. I follow the statute. I don't go around trying to find out the loopholes in it and get around it.

Mr. Shucklin: I don't say this a loophole.

The Court: I think it is. It says flatly that if he votes in an election that settles it. I don't see why I shouldn't recognize the statute as written.

Mr. Shucklin: Well, I think under these facts that the statute applies, but for instance, if he was bound and gagged and forced to vote there wouldn't be any question in your mind at that time of physical duress, that this [58] man was not doing a voluntary act.

The Court: Well, I don't care anything about that because Congress has said flatly that if he votes that is it. Now, I don't know why I should go around and try to find out flaws in the statute. As a matter of fact, it is the presumption that the statute is valid in the language in which it is written. I think that congressional—

Mr. Shucklin: Take the case of Perkins vs. Elg. In that particular case if the Supreme Court followed the exact wording of the statute, there wouldn't be any question of treaty. In your Honor's case, in the Reid case, is another example where your Honor found the real intendment of the act although the case was reversed by an upper court later on. The Supreme Court exactly endorsed your action in the Reid case.

The Court: No, you mistake that because the treaty wasn't in comparable terms of this statute. The treaty was that if the parents were naturalized, then the children should be deemed to be Canadian citizens. The statute and the treaty are not in the exact language. [59]

Mr. Shucklin: Well—

The Court: All I am saying—I haven't decided this case, but all I am saying is that I don't see on what justification these District Courts have gone

on a theory of duress. The statute doesn't say anything about duress. They do not discuss the question. There isn't a single one of them that discusses the question.

Mr. Shucklin: Yes, but the Circuit Court of Appeals has endorsed that action. They cite all these cases with approval.

The Court: They cite them but they don't justify the lower courts in setting aside the statute.

Mr. Shucklin: No, they don't justify the courts in just willy nilly saying there isn't such a statute, no.

The Court: Well, we are writing things into the statute without any doubt in the world.

Mr. Shucklin: Well, I think the whole background is that citizenship, an American citizenship by birth, is a precious thing and shouldn't be lightly thrown away and cast aside.

The Court: I think that is true, too. As a matter of fact, I have stood up for that when a [60] great many other people didn't.

Mr. Shucklin: You bet, and I don't care what Congress says. A person born on this soil has got a vested interest in this soil, and because some State Department official says, Well, you voted and therefore you can't come back to the soil where you were born," I think is a cavalier method of acting, and if the State Department had any feeling for American citizens regardless whether Japanese or English descent or what descent, there should have been a warning to these people stranded in that country, and this boy was stranded. It was by circumstances

that he was there. He had nothing to do with this war. He didn't voluntarily go to Japan. His father sent him. If he had been allowed to go to grammar school here, he probably wouldn't have gone. But the father, I think, on the stand he has become more and more Americanized as he has been remotely connected with Japan, but at the time the boy was that age he had a father and mother back there and he wanted to send the boys back. Certainly it was through no fault of the boy that he was in Japan in wartime, [61] and it is no fault of the boy that he was under the domination of these people in Japan, and without any information as to whether or not he would lose his citizenship. Now, I grant you that the Supreme Court has held that you can't, ignorance of the law is no excuse in a case like that, but it certainly is a circumstance to be considered with all the other circumstances in this case.

The Court: Well, the same situation applies with regard to aliens who have come over here and been naturalized and then they go back to their own country and stay there for two years and then we cancel the citizenship. Now what is the difference between that and this?

Mr. Shucklin: Well, I think there is.

The Court: They don't have to know that that is going to result in the cancellation of their citizenship or anything else.

Mr. Shucklin: I think fundamentally speaking there is a lot of difference between being born a citizen and being naturalized a citizen.

The Court: Do you make a distinction of citizenship in the United States?

Mr. Shucklin: Yes, for the purpose of this [62] argument I say a naturalized citizen has all the rights of a citizen born here, but there are special statutes, and, of course, there are special statutes on naturalization and denaturalization.

The Court: I thought though that there were not to be two classes of citizenship?

Mr. Shucklin: There isn't supposed to be any first and second classes of citizenship and I agree with that, but I say this, that you take away the citizenship of one man by the implication of law who is born here and you take another man's citizenship away because he became a citizen by statute, his citizenship can be abolished by statute.

The Court: I don't think that. I think that we did create two classes of citizenship as far as the Japanese were concerned by interning American-born Japanese in this country who hadn't done anything.

Mr. Shucklin: That is right. That was a creation.

The Court: That created two different classes of citizenship.

Mr. Shucklin: No, we did not have the right to do it. [63]

The Court: If it was so important then, why isn't it important now to recognize this training in Japanese schools and this devotion to the Emperor in formative years of a man's life and up to the time he is twenty-one, and then if he makes some

act which the statute indicates should cancel his citizenship, why isn't Congress absolutely within its authority to pass——

Mr. Shucklin: I don't see that it has the authority to do that. I do say that the facts upon which the citizenship is claimed to be lost should be carefully scrutinized and that is what these District Courts have done.

The Court: Well, I don't think that this man has any training which would indicate to me that he didn't make the choice voluntarily. His training is all as an alien Japanese, educated all the way through and acting directly upon the authority of the people in Japan who are aliens, his grandfather and his uncle.

Mr. Shucklin: He didn't have a choice.

The Court: Why no choice?

Mr. Shucklin: No choice at that time. [64]

The Court: There were American citizens who thought enough of their citizenship that they died by hundreds during the war. I don't see why someone should take chances on citizenship.

Mr. Shucklin: He didn't know that he was taking any chances.

The Court: After all, he is a man of age. Why not? Why isn't the choice free? You take a man who stands up and says, "I am going to be an American citizen and if that requires me to be put in the army, all right, and if I am killed, all right because that is a price that I pay for American citizenship." Here is a fellow that wouldn't take a

chance of anything. He is afraid he will lose his ration card so, therefore, of course——

Mr. Shucklin: It is uniformly held, there are eight or nine decisions on this question of ration card.

The Court: That is a question of fact. I look at it differently. I don't know why an alien Japanese, educated in Japan, can't be thought to make a very impartial choice when he chooses Japanese citizenship.

Mr. Shucklin: He didn't choose it. [65]

The Court: I think he did. I think——

Mr. Shucklin: He was directed to go to the polls.

The Court: Yes, by an alien Jap who isn't an American citizen.

Mr. Shucklin: That is right.

The Court: And the authority—why shouldn't I think that after he got to this country the same alien Jap would tell him to go kill the president? He is bound to do it, of course.

Mr. Shucklin: No, he is not forced to do that.

The Court: That is what you are contending.

Mr. Shucklin: I am contending that when he went to vote that it wasn't his free and intelligent choice.

The Court: If he killed the president it wouldn't be his free and intelligent choice, his uncle told him.

Mr. Shucklin: He went there because of fear of punishment.

The Court: Maybe they will tell him they will

punish him this time. Get rid of this fellow over here for oppressing the Japanese people.

Mr. Shucklin: There is every reason to believe from the evidence, from the fact that he has got a father, mother, brothers and sister [66] living right outside of this town, that his own intention was to come back to be with his family.

The Court: He has got a family in Japan and he was obeying their orders.

Mr. Shucklin: Certainly.

The Court: Now he has changed his mind and wants to obey the orders of people on this side because the Japanese people are involved in things that there is some advantage at this time for having him a citizen of the United States.

Mr. Shucklin: I don't think that is true. Why is there anything so un-American about a family wanting to be together? I don't see it.

The Court: I don't think it is un-American for them to be together, but I think they see a tremendous advantage in having this man an American citizen.

Mr. Shucklin: I don't think that entered into their minds. They figured he was an American citizen. They wanted him home with them where he belonged.

The Court: Why didn't they keep him at home instead of sending him to Japan to be [67] educated?

Mr. Shucklin: That, I can't answer except this, he was to be there a few years and 1941 comes and he can't get back.

The Court: They wanted him educated under the Japanese Emperor system.

Mr. Shucklin: That isn't the fault of the boy.

The Court: I think it is his fault that he gets educated in that situation. I think it is entirely alien to our form of thinking, education of that type. I don't think it made him an American citizen. I think it made him a subject of the Emperor.

Mr. Shucklin: Well, he didn't register his citizenship there.

The Court: I know, but that shows how much he was under the influence of these alien Japanese who were under the domination of that system.

Mr. Shucklin: I can't see anything in the law where he acted under duress to vote that would make him a Japanese citizen.

The Court: Well, I only consider that as one of the factors involved. As a matter of fact, I think he made his choice in the years before. I think that there is evidence to show that he made his choice and that he was going with the [68] Japanese people and that this is only a circumstance. It happens that this circumstance fell within the prohibition of the statute.

Mr. Shucklin: Now I'd like to invite your Honor's attention to the case of Kawakita vs. United States, in 190 F. (2d), page 506. Now this was a treason prosecution against a person born in the United States of Japanese parentage for alleged acts of treason by defendant while residing in Japan during the World War II. There was evidence of defendant's treatment of American prisoners of

war and particularly of defendant's knocking an American prisoner of war into the camp drain or cesspool and striking and beating him as he attempted to get out, and sustained a finding that the defendant committed an overt act which amounted to aid and comfort to the enemy. There are facts in this case which show that he registered himself as a Japanese citizen, but yet the Court did not find in that treason case that Kawakita who did everything to brand him as a Japanese enemy, lost his American citizenship. Now, can there be one principle [69] of law when the Government wants him here to prosecute him for treason and another principle of law where he is merely exercising and trying to exercise his birthright?

The Court: Oh, sure, I think there is no doubt about that case being a treason case. I don't think you can escape a charge of treason just by going over because that is treason in itself, going over.

Mr. Shucklin: Still the same statutes apply. Following that other reasoning then, this man has become a Japanese citizen and has not committed treason by the mere fact that he registered as a Japanese citizen.

The Court: I don't think that had anything to do with it.

Mr. Shucklin: I think, your Honor, the same principles of law apply.

The Court: I don't. I don't think that you can give up your American citizenship and commit treason without being punished.

Mr. Shucklin: Then conversely speaking, this

man after he voted, and we will say for the purposes of argument, after he voted he committed an act of treason—I am talking about [70] Takehara—he could defend himself on the ground that he was not an American citizen at the time he committed the so-called act of treason under the same reasoning as in the Kawakita case.

The Court: I don't think so. Besides, the war is over as far as that is concerned. I think that perhaps a man during time of war couldn't give up his American citizenship in order to attack the United States. That would be a very easy out.

Mr. Shucklin: Yes, but we have this situation where it is all past just like in the Kawakita case. He registered as a Japanese citizen voluntarily himself, stayed out the requisite period of time. This man Takehara, we will say, loses his citizenship by virtue of the fact he voted in this Japanese election. We will say that two years later during the Korean war he collaborated with the North Koreans. There is an act of treason. Now, if he was——

The Court: That is right.

Mr. Shucklin: ——a Japanese and because he lost his American citizenship by voting, he [71] couldn't be charged with treason against the United States, and that is the same reasoning as this Kawakita case. Now we have the case of *Rokui vs. Acheson*, 94 F. Supp. 439, holds along the same lines that I have stated. *Yamamoto vs. Acheson*, 93 F. Supp. 346 and *Ouye vs. Acheson*, 91 F. Supp. 129 holds the same thing from a factual standpoint. Then, of course, we have the *Murakama* case which I believe

your Honor is familiar with in which they held that a renunciation of citizenship while incarcerated pursuant to civilian exclusion orders issued during World War II, was not the result of a free and intelligent choice, but rather because of mental fear, intimidation and coercion, and that the renunciation was void and of no effect. Well now, there is another case that we can reason from. Murakama was in a camp and, as your Honor said, they were treated as second-class citizens. No physical harm was visited on him and I imagine no physical pressure was used to make him renounce his orders, renounce his citizenship, and one of the reasons for it was the fact that he didn't [72] want to work for Nine Dollars a month whereas other American citizens were working for a lot more than that, but still, pursuant to an exclusion order pursuant to a statute, he renounced his American citizenship and the Court held that it was not a result of a free and intelligent choice. Now, the question of unconstitutionality is considered in Okimura vs. Acheson. I don't intend to argue that point, but merely to submit that case for your Honor's thinking on the subject. I understand that that case is being heard by an Appellate Court, is that correct?

Mr. Dovell: As far as I know it is, yes.

Mr. Shucklin: I think there is one other case that I should refer to at this present moment and that is the Fujizawa case. In Fujizawa vs. Acheson, tried by District Judge Weinberger, the syllabus says evidence established that application for recovery of Japanese citizenship made by plaintiff, a per-

son of Japanese ancestry, born in the United States, and who was temporarily in Japan during the years which allegedly resulted in loss of his United States citizenship, was not a free and [73] voluntary act of the plaintiff and the plaintiff never intended to renounce his United States citizenship; and in that particular case the Court went into the question of how the Nisei or the American citizens were treated in Japan and the fact that they were stranded there and more a subject of pity rather than of condemnation. It says here, "The testimony of Thomas L. Blakemore, a resident in Japan who was formerly language officer in the United States Army and formerly legal assistant in the Office of the United States Political Advisor in Tokyo, and at the time of the trial of this case, was employed under the Supreme Commander of Allied Powers as Chief of Civil Affairs—" said this, "During World War II the Nisei who had renounced their Japanese Nationality were in a difficult position because of inability, as aliens, to obtain the generally used and accepted proof of identity available only to persons of Japanese Nationality, to wit, copies of the Family Register Record; in Japanese society the Family Register Record is used for many purposes, and is a necessary step in connection with marriage, negotiations, schooling, employment and during time of rationing of food, clothing and housing, and when restrictions were placed on residence and movement about the country, the need for a Family Register Record became even stronger——"

The Court: Well, Judge Weinberger is considering a special set of facts. That is not binding on me at all.

Mr. Shucklin: I understand that that is not.

The Court: And I don't think it is persuasive in the least. I think these Courts are carried away emotionally. We are the conquerors and therefore we should give everything away. I don't believe that at all because it seems to me that it is strictly a question of fact. Now just because this boy has loyal American citizens on this side, is no reason for me to believe that he is a loyal American citizen. He might be a communist as far as I know. I don't see any reason why I should believe that under the domination——

Mr. Shucklin: There is no evidence that he is a communist that I know of in the record.

The Court: I know, but there is no evidence that [75] he isn't either.

Mr. Shucklin: I don't think he has to prove if he is a communist or not.

The Court: I know he doesn't, but he does have to convince me that his training and such is of a nature so that I would not think that this was a voluntary act on his part if I am going to consider that at all. As a matter of fact, I think the congressional statute is sufficient without worrying about that. But he voted in Japan. That is the answer. Congress has said so. Why should I go out of my way to create exceptions? That is, if he ever was an American citizen. He got the citizenship by birth and I think he elected Japanese citizenship. I think

it is very obvious that he elected Japanese citizenship.

Mr. Shucklin: I don't see anything in the record that shows that he elected Japanese citizenship.

The Court: I think there is. He voted.

Mr. Shucklin: That is exactly what we are arguing about here.

The Court: Well, I think it was an election myself. [76]

Mr. Shucklin: I don't think it is necessary that there is any judicial legislation in order to create the fact that if he did it involuntarily or under duress that the statute didn't apply.

The Court: I think it is judicial legislation writing something in the statute that is not here.

Mr. Shucklin: Duress has always been—if you steal, if you murder, there isn't anything in any statute, any criminal statute that says that if it is done under duress it is a defense, but it is a part of the law.

The Court: I don't think that is true. You try saying in a criminal court that somebody told you to go kill him or you would lose your ration card if you didn't kill him. Do you think that would be a defense?

Mr. Shucklin: That isn't a defense in that matter, of course not.

The Court: Neither in this, either.

Mr. Shucklin: I will take an analogy of a wife under duress by her husband to commit a crime. There isn't any Federal statute that says that that is a defense, but it is under the common [77] law,

and that is a good and valid defense on the prosecution of a wife.

The Court: It isn't any more. That is only survival of medieval rule that that was a defense at one time. It isn't any more because I have tried it. I have tried it where that defense was put up. I have seen it convicted. Well, bank robbery for instance, a woman claims she was acting under the duress of her husband. I put it up to the jury and they said she wasn't and here I am the trier of the fact.

Mr. Shucklin: You are the trier of facts, of course.

The Court: I don't see that because some other judge is affected by emotionalism—I think a lot of them are. I think that that is just the explanation of these things, but the statute of Congress says flatly that if he voted that is one thing, but I think that isn't the gate that we come to first. The first gate we come to is whether he had not, by his course of conduct, already elected Japanese subjection to **the Emperor** before he ever got to this point. I **think** it is only an additional straw in the wind. [78]

Mr. Shucklin: No, but the State Department said you lose your citizenship because you voted in this April election.

The Court: That doesn't make any election if they chose that. If I think he is not an American citizen, I am certainly not going to admit him.

Mr. Shucklin: Let me ask you this then, suppose he hadn't voted, does your Honor contend then that you could find that he wasn't?

The Court: Oh, absolutely.

Mr. Shucklin: That he wasn't an American citizen?

The Court: Absolutely, no question about that. That is the way these choices are generally made. Here is an opinion right here. You can look at it. This woman is an American citizen contending that she should still be considered an American citizen notwithstanding the fact that she married a French citizen when she was nineteen years of age.

Mr. Shucklin: Of course that is not the same as the renunciation, this is renunciation under statute. It certainly isn't one.

The Court: No, it is not a renunciation under statute, just common law renunciation. She tried to claim she never intended to be anything [79] but an American citizen, but the evidence is to the contrary. A very reasonable opinion, I think, but it is an opinion on fact.

Mr. Shucklin: There isn't anything in this case that showed outside of this election, of this voting, that he had any intention of being a Japanese citizen.

The Court: I think so. His whole course of conduct showed, his education, everything else. Everything pulls him toward Japan. I don't think anything about a command of his father now, subsequently.

Mr. Shucklin: But the only way he could become a Japanese citizen under the other branch was that he voluntarily become one by making a declaration and making an application. He never did.

The Court: I don't think so at all; I don't think

that that is true. I think his education and everything points to the fact that he intended to be a Japanese. Now he is Japanese. That is it.

Mr. Shucklin: I'd like to reserve the rest of my argument in rebuttal, your Honor.

The Court: There isn't going to be any rebuttal. [80] Go ahead and make any argument you want now. I have pretty well determined this case on the facts as far as I am concerned. I have pretty well made up my mind that this man made an election in Japan and in the first place didn't have an American citizenship to renounce, and if he did have he renounced it under the statute.

Mr. Shucklin: Of course he had the American citizenship to renounce. He was born here.

The Court: Well, I don't think he did at the time he voted, but if he did, why then he voted. That settles it, regardless.

Mr. Shucklin: Well, there are nine decisions, most of them are on weaker facts than the one we have here that held that that voting was done under duress.

The Court: Well, I know that is just a District Judge's opinion. I am just as competent to pass on these facts as any District Judge.

Mr. Shucklin: The Circuit Court of Appeals has okayed these decisions of this circuit.

The Court: If they want to reverse me on a question of fact, it is up to them.

Mr. Shucklin: I know that is a hard thing to do. [81]

The Court: No, it is not hard for the Court of

Appeals of the Ninth Circuit. They do it all the time. They haven't any business, but they do it. That wouldn't affect me. I have to decide the thing the way I see it. In the first place I hold that this act is not unconstitutional, the long history to the contrary in the *Mackenzie vs. Hare*, and it was considered in the *Reid* case and considered in the *Elg* case, so I think there is no doubt about the constitutionality of the statute. In the second place, Japan is a foreign country and the mere fact that occupation is by American troops has nothing to do with the structure of the country's government. The Americans going in there take over and become a part of an alien government under those circumstances. That is well laid down in the whole series of cases which we have in the military governments that were set up in the occupied states during the civil war, and in the next place, this man had a choice of citizenship after he passed twenty-one. He had to be one or the other and it was only a question of which one you think he was. I [82] think when he passed twenty-one, in my opinion, that he had chosen Japanese citizenship and chosen to be under the domination of the branch of the family that was then in Japan and to obey their orders, and they were aliens and, therefore, I think that he made a deliberate choice. He is twenty-one years old and I don't know why a person can't elect—I do use the circumstance that he voted in the election there to show that that choice was confirmed by voting at a Japanese election, but if he had not lost his American citizenship by that choice, then he lost it by vot-

ing in an election contrary to an Act of Congress, and I am not going out of my way. I don't think the circumstances here indicate duress at all. I don't think there is even a syllable about duress in here except there is some talk about mental control and family discipline and a few things like that. Well, that is not duress. No one ever held it was duress and in a civil case it won't get you anywhere. In a criminal case it won't get you anywhere. It is just duress that is created for the purpose of letting these people expatriate themselves or repatriate themselves, [83] and under the circumstances it wouldn't hold in a contract or hold in a criminal case and I don't think it holds here, so all in all I am very much of the opinion that I have to hold against this. I think that the whole testimony in court bore me out in that regard. These people, it is true I have held—I think very strongly in favor of these American citizens who tried to hold onto their citizenship in this country, but I never changed my opinion about the Yasui case. I think there was a deliberate choice there also and I don't think the Supreme Court reversed that at all, they simply held that in that regard it had nothing to do with the statute. The statute was to create two classes of citizens of native born Japanese ancestry and native born of American ancestry, and as a result it segregated them and that question of citizenship had nothing to do with the case. That is what the Supreme Court said, but I don't think they reversed me on the question saying that Yasui too had chosen Japanese citizenship.

Mr. Shucklin: That wasn't considered.

The Court: And as a result of the whole [84] thing I may be out of line on the holding of a question of fact, but I am going to hold on the question of fact because I see it.

Mr. Shucklin: There is another case I'd like to cite to your Honor if you don't mind. There is just one more decision, if your Honor will bear with me.

The Court: Yes, the case of Vegetable Farms vs. United States. The Court of Appeals of the Ninth Circuit reversed the Tax Court of the United States holding that because they tried to operate their corporation although they were interned, they were not entitled to be further penalized by the Tax Court on the ground that they rendered no services for their corporation. Very interesting case. I thought the Tax Court went off on the settlement that was developed during the war. At least let the Japanese claim production on the same basis as other American citizens.

Mr. Shucklin: I think Mr. Sakahara was going to bring in one of the decisions. The only point in my mind is that I am still not clear, your Honor, how, without a violation of any of these subdivisions of Title 6, Section 801 [85] (a) through (j), that a person could be denied his citizenship.

The Court: You will find that the defendant in that case that I gave you, that sort of thing, nationality acts aren't the only ones. This is a proposition of general law that at twenty-one a person has a choice and they exercise that choice one way or the other. This dual citizenship business, there

is no question at all that under Japanese law this man was the subject of the Emperor just as much as he was by the American Constitution a citizen of the United States by birth on American soil. Now then, when he gets twenty-one, why he has to choose one way or the other and that is the only way we can find out, by one method or the other, what his intention was. I certainly don't think there is anything in the record to show his intention was to claim American citizenship. The way I interpret that, is that after the thing got along his father decided that it would be advantageous for him to be an American citizen. I think his family are American citizens. I don't think there is any question about that part, and I don't impute [86] anything to the contrary, but then you have to consider these cases on the basis of the individuals. I don't think you can take one individual and say because he did certain things that somebody whose entire education and course of training and personal attitude is a different type, that he must be made an American citizen because his family are American citizens. As a matter of fact, we have that same situation in our country where during the civil war there were people on both sides who belonged to the same families. While we are waiting, I read a summary about this, counsel. Would you like——

Mr. Dovell: I just want to address the Court briefly.

The Court: All right. If you will go ahead with

your argument, and I will have Mr. Shucklin cite his case in rebuttal.

Mr. Dovell: Your Honor, I do not agree with the facts of the Kawakita case as stated by counsel. I think that Kawakita maintained his status as an American citizen because the facts stated that he, on page 508 of 190 Fed. 2d, that he entered this Meiji University in [87] March, 1941, where he took a course in commerce and also received military training. In April, 1941, he renewed his passport. It isn't that he kept up his Japanese citizenship, it is that he kept up his American citizenship and was certainly subject to treason. Now, in the case before the Court, what has this man done that he could be charged with treason, on what basis could he even be charged with treason if he committed acts in Japan similar to what Kawakita had committed? He was Japanese all the way through. There is nothing in the record to show that he was otherwise. At the time he voted he had not committed himself to the choice of American citizenship so that under the circumstances such as in the Kawakita case he could have been prosecuted for treason if he had committed acts favorable in behalf of the enemy. When he voted he very likely voted in the same spirit as any other Japanese voted in Japan. He was inspired by the same urge to vote. Now certainly, the Supreme Court as well as the Congress has indicated that some limitation should be set upon the time of exercising this choice, and [88] it was three years, practically four years after he had attained his

majority that he undertook to obtain a passport. True, he might have intended to do so before, but he was waiting until it was convenient for an American consulate to be set up near by. As far as the District Courts are concerned, in *Uyeno vs. Acheson*, 96 Fed. Supp., 510, is about the only District Court that considers the matter of limitation as far as I could find, but the Supreme Court did consider in——

The Court: What was that citation again?

Mr. Dovell: That is the case of *Uyeno vs. Acheson*, 96 Fed. Supp., 510, and that was considered on page 520, your Honor.

The Court: The Supreme Court of the United States, as I understand, recently reversed the Tule Lake cases in saying expressly that the intention in those cases was the question of fact, isn't that right?

Mr. Dovell: I have a note here from the secretary, Miss McCoy, in which she says Judge McLaughlin was reversed by the United States Supreme Court on January 2nd involving voting by the Japanese, 99 Fed. Supp. 587, and the companion [89] case 591. I am not sure about the other, your Honor, but I have that note. The Government's position is stated in the Government's brief on page 3 of our brief, your Honor, line 7. The Government's position is that, "in view of the plaintiff's Japanese antecedents, upbringing and schooling in Japan, his naturalization as a Japanese national, and in view of his admitted ignorance of the effect of his voting upon his claim to

American citizenship, it would appear that the plaintiff had no reason to abstain from voting." That I say with reference to voluntary or involuntary voting. There is another consideration with reference to voluntary voting, and that is he found it convenient not to vote again when he heard about the possibility of loss of citizenship, American citizenship. But a person that is of dual nationality, as I take it your Honor, has that dual nationality without any election on his part to be a Japanese citizen. He had that dual nationality. It was already there. He didn't have to elect to be a Japanese. He was there in that country. The obligation was upon him to elect or to assert his American [90] citizenship. That is all I have, your Honor.

Mr. Shucklin: Your Honor, I would only reiterate what I said before. I think that your Honor might well hold that there was duress in this case. I think this boy's testimony was consistent. The fact that he had made that statement to the American consul at Kobe that it was under fear of punishment that he did vote, the fact that when he learned that voting would endanger his citizenship he voted no more, all those facts are consistent with American citizenship and inconsistent with Japanese citizenship and consistent with our theory in this case that when he went to the polls in Japan that he voted under duress and not under his free and intelligent choice.

The Court: I will write a memorandum in this case.

Mr. Shucklin: Your Honor, should we find some other cases that might be of some help to our cause, may we send a copy to counsel and send one to you?

The Court: Yes, any time Mr. Shucklin.

Mr. Shucklin: Thank you.

The Court: Court is in recess.

(Whereupon, Court was recessed at 11:50 a.m.) [91]

Certificate

I, Adele U. Douds, official reporter for the within-entitled court, hereby certify that the foregoing is a full and complete transcript of matters therein set forth.

/s/ ADELE U. DOUDS.

[Endorsed]: Filed August 5, 1952. [92]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure as amended, and Subdivision 1 of Rule 11 as amended, of the United States Court of Appeals for the Ninth Circuit, I am transmitting here-

with all of the original papers and pleadings and exhibits in the above-entitled cause, except such papers and pleadings which were stipulated by the parties hereto to be omitted from the Record on Appeal, and the said papers, pleadings and exhibits herewith transmitted constitute the Record on Appeal from that certain Judgment of the above-entitled Court, filed and entered on August 9, 1952, to the United States Court of Appeals for the Ninth Circuit at San Francisco, California, and are identified as follows:

1. Amended Complaint (filed Nov. 13, 1951).
2. Answer (filed July 27, 1951).
3. Plaintiff's Proposed Findings of Fact and Conclusions of Law (lodged Apr. 10, 1952).
4. Plaintiff's Proposed Declaratory Judgment of Citizenship (lodged Apr. 10, 1952).
5. Opinion (filed July 24, 1952).
6. Defendant's Findings of Fact and Conclusions of Law (lodged Apr. 7, 1952; filed Aug. 9, 1952).
7. Judgment of Dismissal (lodged Apr. 7, 1952; filed Aug. 9, 1952).
8. Plaintiff's Notice of Appeal (filed Aug. 19, 1952).
9. Cost Bond on Appeal (filed Aug. 19, 1952).
10. Reporter's Transcript of Testimony (filed Aug. 5, 1952).
11. Appellant's Statement of Points on Appeal (filed Aug. 29, 1952).
12. Stipulation for Designated Parts of Record

to be Omitted from the Record on Appeal (filed Sept. 2, 1952).

and correspondence included in said case, identified as follows:

13. Letter, dated 4/9/52, Shucklin to Clerk.

14. Copy of letter, dated 4/10/52, Clerk to Judge Fee's secretary re transmittal of Plaintiff's proposed Findings of Fact, Conclusions of Law and Judgment.

15. Copy of letter, dated 8/13/52, Clerk to Judge Fee's secretary requesting return of Pltf's proposed Findings, etc.

16. Letter, dated 8/18/52, Shucklin to Clerk re filing Notice of Appeal.

17. Copy letter, dated 8/19/52, Clerk to Shucklin re appeal fee.

18. Letter, dated 8/20/52, Shucklin to Clerk, re-mitting fee.

19. Letter, dated 8/28/52, Judge Fee's secretary to Clerk, returning Pltf's proposed Findings, etc.

20. Copy letter, dated 8/28/52, Shucklin to U. S. Attorney re Transcript of Testimony.

21. Copy letter, dated 8/28/52, Shucklin to U. S. Attorney, re Appellant's Statement of Points and Stipulation of Designated Parts;

Also transmitted are the following original exhibits which were admitted in evidence at the trial of the above-entitled cause, to wit:

Plaintiff's Exhibit #1—Certificate of Loss of Nationality of U. S.

Defendant's Exhibit #A-1—Certified Transcript of Records of Dept. of State.

United States Court of Appeals
for the Ninth Circuit

No. 13555

GEORGE TAKEHARA,

Appellant,

vs.

DEAN G. ACHESON, Secretary of State,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON BY APPELLANT ON APPEAL AND
DESIGNATION OF RECORD FOR PRINT-
ING

Comes now George Takehara, the appellant, and pursuant to subdivision 6, Rule 19, of the Rules of the United States Court of Appeals for the Ninth Circuit, herewith adopts the statement of points filed by appellant in the District Court upon which this appellant intends to rely in this court and cause; and with the foregoing statement, the said appellant designates as necessary for the consideration of said appeal all that portion of the original papers of record in this cause and exhibits therewith certified and transmitted by the Clerk of the District Court to the United States Court of Appeals for the Ninth Circuit in this cause, pursuant to stipulation of parties covering omissions from

record on appeal with the exception of documents therein named.

Dated this 27th day of September, 1952.

/s/ TORU SAKAHARA,

/s/ GERALD SHUCKLIN,

Attorneys for Appellant,
George Takehara.

Service of copy acknowledged.

[Endorsed]: Filed September 30, 1952.

